re JENKINS stands, who thundring from the TOWER
ook the bold Senats Legislative Power,
e of whose words twelve Reames of votes exceed
mountaines movd by graines of mustard-seed
Thus gasping Lawes were rescu'd from the Snare,
he that will save a Crowne must know and dare.

J. Berkenhead

THE WORKS OF THAT Grave and Learned LAWYER Iudge Ienkins UPON Divers Statutes, Concerning, the *Liberty* and *Freedome* of the *Subiect*.

With a perfect Table thereto annexed.

By *David Ienkins*, Prisoner in Newgate.

Plebs sine Lege ruit.

LONDON,
Printed for *J. Gyles*, and are to be sold at his Shop at *Furnivals-Inne*. 1648.

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First, if the King do not demeane himself by reason in the right of his Crowne, his Leidges are bound by Oath to remove the King.

Secondly, seeing the King could not be reformed by suit of Law, that ought to be done *per asperte*, that is by force.

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The Writ whereby the King assembled the two Houses, which is called the Writ of Summons, at all times, and at this Parliament used, and which is the warrant, ground, and foundation of their meeting, is, for the Lords of the House of Peers, to Consult and Treat with the King (that is the *Parler*) of great Concernments, touching;

1. The King.
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The Office of the Lords, is to Counsell the King in time of Peace, and to defend him in time of War, *p*, 126. 142.

It belongs to the House of Lords, to reforme erroneous Judgements given in the Kings Bench, to redresse the delayes of Courts of Iustice, to receive all Petitions, to advise his Maiesty with their Counsell, to have their Votes in Voting, or abrogating of Laws, and to propose for the Common good, what they conceive meet. p. 38.

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rons, and at the humble petition of the Commons, &c.

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The Priviledge of Parliament protects no

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man in case of Treason or Felony, p. 15. 16. 78.

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The present Parliament.

THis Parliament began 3. Novemb. 1640. and in the beginning therof the King acquitted the Ship Money, Knighthood-money, seven Courts of Justice consented to a Triennial Parliament, setled the Forrest Bounds, tooke away the Clarke of the market, of the Houshold, trusted the Houses with the Navy, passed an Act not to dissolve this Parliament without the Houses assent: No people in the world so free, if they could have been content with Lawes, Oaths, and Reason, and nothing more could, nor can be devised to serve us, neither hath been in any time before. p. 34.

Notwithstanding all this (Jan. 10. 1641.) the King was driven away from London, by frequent Tumults, and 2. thirds, and more of the Lords had deserted that House, for the same cause, and the greater part of the House of Commons, left that House also for the

same reason, new men chosen in their places against Law, by the pretended *Warrant* of a counterfeit Seale, and in the Kings name, against his consent, levying War against him, and seising his Forts, Ports, Magazins, and Revenue, and converting them to his destruction, and the subvertion of the Law, and land, laying Taxes on the people, never heard of before in this Land, devising new Oaths, to oppose the Forces raised by the King, *&c. p.* 35.

From the 3. *Nov.* 1640. unto *Ian.* 10. 1641. they had time to persecute all evill Counsellors and *Iudges. p*, 17. 41.

From that time the King was driven away, the two Houses stood in opposition to the King and his power. *p.* 66.

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1; *A*gainst Common right; for therby the parliament wen will not pay their debts: And they

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2. Against common reason, for parliaments were made to redresse publique Grievances, not to make them.

3. Impossible, the Death of his Majestie (whom God long preserve) dissolving it necessarily.

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God save the King.

To the Honorable Societies of *Grayes-Inne*, and of the rest of the Innes of Court, and to all the Professors of the Law.

I Have now spent Fourty five yeers in the Study of the Laws of this Land, being my profession; under and by the conduct of which Laws, this Common-wealth hath flourished for some Ages past in great splendour and happinesse. (Jam seges est ubi Troja fuit.) The great and full body of this Kingdom hath of late yeers fallen into an extreme sicknesse: it is truely said, that the cause of the disease being known, the disease is easily cured. There is none of you, I hope, but doth heartily wish

 th:

the recovery of our common parent, our native countrey (Moribus antiquis stat res Britanica.) *I call God to witnes that this discourse of mine hath no other end then my wishes of the common good: how farre I have been from Ambition, my life past, and your own knowledge of me, can abundantly inform you: and many of you well know, that I ever detested the ship-mony and monopolies, and that in the beginning of this Parliament for opposing the excesses of one of the Bishops, I lay under three Excomunications, & the examination of seventy seven Articles in the high Commission Court. His sacred Majesty: (God is my witnes) made me a Judg in the parts of Wales against my will, and all the meanes I was able to make; and a patent for my place was sent me, for the which I have not paid one farthing, and the place is of so inconsiderable a be-*

benefit, that it is worth but 80.l. per Annum *when paid, and it cost me every yeare I served twice as much out of my own estate in the way of an ordinary and frugall expence. That which gave mee comfort was that I knew wel that his Majesty was a just and a prudent Prince.*

In the time of the Atturney-ships of Master Noy *and the Lord* Banks, *they were pleased to make often use of me, and many referrences concerning suits at Court upon that occasion came to my knowledge; and as I shall answer to God upon my last account this is truth, that all or most of the references which I have seen in that kind (and I have seen many) were to this effect, that His Majesty would be informed by his Council if the suits preferred were agreeable to the Lawes, and not inconvenient to his people, before he would passe them. [what could*

a just and pious Prince do more?] Gentlemen, you shall finde the Cause and the Cure of the present great distemper in this Discourse; and God prosper it in your hands, thoughts, and words, as the case deserves.

Hold to the Laws, this great body recovers: forsake them, it will certainly perish. I have resolved to tender my self a Sacrifice for them as chearfully, and I hope (by Gods assistance) as constantly as old Eleazar *did for the holy Laws of his Nation.*

Your Well-wisher,

DAVID JENKINS,

Now Prisoner in the Tower.

LEX

LEX TERRÆ.

THe Law of this Land hath three Grounds: First, *Custome*. Secondly, *Judicial Records*. Thirdly, *Acts of Parliament*. The two later are but declarations of the *Common Law* and *Custom* of the Realm, touching *Royal Government*. And this Law of *Royal Government*, is a *Law Fundamental*.

The Government of this Kingdom by a *Royal Soveraign*, hath been as ancient as History is, or the memorial of any time: what power this *Soveraigny* alwayes had and used in War and Peace in this Land, is the scope of this Discourse: that *Usage* so practised, makes therein a *Fundamental Law*; and the *Common Law* of the Land, is *Common Usage*; *Plowdens Commentaries* 198. For the first of our Kings since the Norman Conquest, the first *William*, second *William*, *Henry* the first,

The Kings Prerogative is a principal part of the Common Law. *Com. Littl.* 344. 27 *Hen* 8. *Stamford prær. fol.* 1. 2 *Pars instit. fol.* 496 3 *Pars instit. pag.* 84.

first, *Stephen*, *Henry* the Second, and *Richard* the first, the Customes of the Realme touching *Royal Government* were never questioned: The said Kings enjoyed them in a full measure. In King *John*; time the Nobles and Commons of the Realme conceiving that the ancient Customes and Rights were violated, and thereupon pressing the said King to allow them in the seventeenth of King *John*, the said Liberties were by King *John* allowed, and by his Son *Henry* the Third, after in the ninth year of his Reigne confirmed, and are called *Magna Charta*, and *Charta de Foresta*, declared four hundred twenty two yeares sithence by the said Charters.

Now rests to be considered, after the Subjects had obtained their Rights and Liberties, which were no other than their ancient Customes, (and the fundamental Rights of the King as *Soveraigne* are no other,) How the Rights of *Soveraigntie* continued in practice from *Henry* the Thirds time untill this present Parliament of the third of *November*, 1640. For before *Henry* the Thirds time, the *Soveraigntie* had a very full power.

Rex

Rex habet Potestatem & jurisdictionem super omnes qui in Regno suo sunt, ea quæ sunt jurisdictionis & pacis ad nullum pertinent nisi ad Regiam dignitatem, habet etiam coercionem, ut Delinquentes puniat & coerceat: This proves where the supream Power is.

Bracton temp. H. 3. L. 4. cap. 24. Sect. 1.

A Delinquent is he who adheres to the Kings Enemies *Com. Sur. Litt.* 261. This shews who are Delinquents.

Omnis sub Rege, & ipse sub nullo nisi tantum Deo, non est inferior sibi Subjectis, non parem habet in Regno suo: This shews where the supream power is.

Sect. 5. Bract ibid.

Rex non habet superiorem nisi Deum, satis habet ad pœnam quod Deum expectat ultorem. This shews where the supreame power is.

Bracton l. 5. tract. 3. de delasci cap 3. Bracton l. 3. cap. 7.

Treasons, Fellonies, and other Pleas of the Crown, *are propria causa Regis:* This shews the same power.

By these passages it doth appeare

what the Custom was for the power of *Soveraignty* before that time, the power of the *Militia*, of coyning of Money, of making Leagues with forraign Princes, the power of pardoning, of making of Officers, *&c.* All Kings had them, the said Powers have no beginning.

Sexto Edw. 1. *Com. Sur. Littl.* 85. Liege-Homage, every Subject owes to the King; *viz.* Faith *de Membro, de vita, de terreno honore*; the form of the Oath, *inter vetera Statuta*, is set down. We read of no such, or any Homage made to the two Houses, but frequently of such made by them.

Edward. 1.

It is declared by the Prelates, Earls, Barons and Commonalty of the Realm, that it belongeth to the King and his Royal Segniory, straitly to defend force of Armour, and all other force against the Kings peace, at all times when it shall please him, and to punish them that shall do contrary according to the Law and Usage of the Realm, and hereunto they are bound to aid their Soveraign Lord, at all seasons when need shall be. Here the supreme power, in the time of Parliament, by both Houses is declared to belong to the King.

7 Edw. 1. Statutes at large *fol.* 42.

At

At the beginning of every Parliament, all armes are or ought to be forbidden to be borne in London, Westminster or the Subburbs. This condemnes the multitudes comming to West minster, and the Guards of armed men.

7 Ed. 2. 4. pars instit. 1

All who held by Knights service, and had twenty pounds *per annum*, were distraynable *ad Arma militaria suscipienda*: This agrees with the Records of ancient time, continned constantly in all Kings times: but at this Parliament 3 November, 1640. the King out of his grace discharged this duty, which proves that the power of warre, and preparation thereto, belongs not to the two Houses, but only to the King.

1 Ed. 2. de Militibus.

The two *Spencers in Edw.* the 2. time hatched (to cover their treason) this damnable and damned opinion (*viz.* That Ligeance was more by reason of the Kings politick capacity then of his person; upon which they inferred these execrable and detestable consequences. First, if the King demeaned not himself by reason in the right of his Crowne, his Lieges are bound by Oath to remove him. Secondly, seeing the King could not be removed by suit of Law, it was to

Edw. 3. Calvins Case, Cook l. 7. fol. 11.

be done by force. Thirdly, that his Lieges be bound to governe in default of him.

All which tenets were condemned by two Parliaments, the one called *exilium Hugonis in Ed.* 2. time; the other by 1 *Edw.* 3. *cap.*2. All which Articles against the *Spencers* are confirmed by this last statute, the Articles are extant in the book called *vetera Statuta.* The separation of the Kings Person from his power, is the principal Article condemned, and yet all these three damnable, detestable, and execrable consequences, are the grounds whereupon this present time relies, and the principles whereupon the two houses found their cause

Plowden. 6 com. 322. 27 ass. pl. 49.

The villein of a Lord in the presence of the King cannot be seised; for the presence of the King is a protection for that time to him: This shews what reverence the Law gives to the person of a King.

Reges sacro oleo unctl sunt capaces spiritualis jurisdictionis: But the two Houses were never held capable of that power.

33. Ed. 3. ayde de roy. 103. Fitz. 10. H. 7. 16.

Rex est persona mixta cum sacerdote, habet Ecclesiasticam & spiritualem jurisdictionem: This shewes the Kings power in Ecclesiasticall Causes.

The

The Lands of the King is called in Law *Patrimonium sacrum*: The Houses should not have medled with that sacred Patrimony. *Com. Sur. Littl. Sect. 4.*

The King hath no Peere in his Land, and cannot be judged: *Ergo* the two Houses are not above him. 3. Ed. 3. 19

The Parliament 15. *Ed.* 3. was repealed, for that it was against the Kings Lawes and Prerogative. 4. *part. Instit. fol.* 52. This shews clearly the Propositions sent to Newcastle, ought not to have been presented to his Majesty, for that they are contrary to the Lawes and his Prerogative.

The Lords and Commons cannot assent in Parliament to any thing that tends to the disinherision of the King and his Crown, to which they are sworn: This condemnes the said Propositions likewise. 4 *Part Cooke Instit. fol.* 14 42. *E.* 3.

To depose the King, to imprison him untill he assent to certain demands, a warre to alter the Religion established by Law, or any other Law, or to remove Councellours, to hold a Castle or Fort against the King, are offences against that Law declared to be treason by the resolutions herein after mentioned; by that Law men are bound to aid the King when warre is levied against him in Parliament Rol. num 7 *Rex & consetudo Paliamenti.*

his

25 Ed. 3. c. 2. his Realm. *King* in this Statute must be intended in his natural body and person, that onely can die; for to compasse his death, and declare it by overt Act, is declared thereby treason; to encounter in fight such as come to aid the King in his Wars, is treason.

Compassing of the Queens death, of the Kings Eldest Son, To coin his money, To counterfeit his Great-Seal, To levie War against him, To adhere to such as shall so do, are declared by that Act to be high-treason. This Statute cannot refer to the King in his politick capacity, but to his natural, which is inseparable from the politick: for a body politick 21 Ed. 4. 14. can have neither Wife, nor Childe, nor levie War, nor do any act but by the operation of the natural body. A Corporation or body politick hath no soul or life, but is a fiction of the Law; and the Statute meant not fictitious persons, but the body natural, conjoyned with the politick, which are inseparable.

The clause in that Act, That no man should sue for grace or pardon for any offence condemned or forfeiture given by that Act, was repealed R. 2. 11 anno cap. 13. by a subsequent Act in 21 R. 2. holden

den unreasonable, without example, and against the Law and custome of the Parliament. This condemnes the Proposition for disabling the King to Pardon. 4. *Pars Instit. fol.* 42. The Act of 11. *R.* 2. so much urged by the other side, was an Act to which the King consented, and so a perfect Act: yet Note the Army then about the Towne: Note that that Law is against private persons, and by the 3. *cap.* therof, the treasons there declared, are declared to be new treasons made by that Act, and not to be drawn to example: it was abrogated 21. R. 2. and revived by an usurper 1 *H.* 4. to please the people, and by the tenth chap. thereof enacts that nothing shall be treason but what is declared by 25 *Ed.* 3.

4 *Pars instit fol.* 42.

16. *Ed. cap.* 5. 16. *R.* 2. *cap.* 5. *H.* 4.

The Regality of the Crowne of *England*, is immediately subject to God, and to none other. Plain words, shewing where the supream power is.

The Commission of Array is in force, and no other Commission, *Rot. Parlm.* 5. *H.* 4. *numb.* 24. an Act not printed: this Act was repealed by 4. and 5. *P. & M. cap* 2. this repealed by the Act of 1. *Jacobi*, and so it is of force at this day, for the repealing

Statute

Statute is repealed 4. *pars Institut. fol.* 51. *&* 125. published sithence this Parliament, by the desire of the house of Commons, their Order is printed in the last leaf of the commentaries upon *Magna Charta*.

A book allowed by Sir *Na. Bretn* called the reason of the war *fol.* 6 5.

Sir *Edward Cook* by their party is holden for the Oracle of the Law, who wrote the said fourth part, in a calm and quiet time, and I may say, when there was no need to defend the authority of the Commission of Array.

For that objection, that that Commission leaves power to the Commissioners to tax men *secundum facultates*, and so make all mens estates Arbitrary: the answer is, that in levying of publick aids upon mens goods and estates, which are variable, and probably cannot be certainly known by any but the owners, it is impossible to avoid discretion in the assessements for so it ever was, and ever will bee. By this appears that the Votes of the two Houses against the Commission of Array, were against the Law.

H. 5.

The death of the King dissolves the Parliament, if Kings should referre to the politick capacity it would continue after his death, 4. *pars Inst.* 46. which proves that the King can-

2 *H.* 5.

4. *pars instit.* 45.

can

not be said to be there when he is absent, as now he is: there is no *interregnum* in the Kingdome; the dissolution of the Parliament by his death, shewes that the beginning and end thereof referres to the naturall person of the King, and therefore he may lawfully refuse the Propositions.

2 *H.* 5. *Chap.* 6. to the King onely it belongs to make Leagues with Forraigne Princes: this shews where the supream power is, and to whom the Militia belongs.

8. *H.* 6. *numb.* 57. *Rott. Parl. Cookes* 4. *pars instit.* 25. No priviledge of Parliament is grantable for treason, felony or breach of the peace; if not to any one Member, not to two, not to ten, not to the Major part, 19. *H.* 6. 62, The Law is the inheritance of the King and his people by which they are ruled, King and people; And the people are by the Law bound to aid the King, and the King hath an inheritance to hold Parliaments, and in the aids granted by the Commonalty. If the Major part of a Parliament commit treason, they must not be Judges of it, for no man or body, can be judge in his own cause, and as well as ten or any number may commit treason, the greater number may

H. 6.

can answer.

The

32 H.6.13. Plowd. 334.

The King by his Letters patent may constitute a County palatine, and grant Regall rights: this shews where the supream power is.

Edw. 4.

17. Ed. 4. Rot. Parl. numb. 39. No priviledge of Parliament is grantable for treason, felony or breach of the peace, if not for one, not for two, or more, or a major part.

Calvins Case 7. pars fol. 11, 12.

The same persons must not be Judge and party. A corporate body can commit no treason, nor can treason be committed against a corporate body, 21. Ed. 4. 13. and 14. but the peasons of the men who make that body, may commit treason, and commit it against the naturall person of him who to some purposes is a body corporate; but *quatenus corporate* no treason can be committed by or against such a body; that body hath no soul, no life, and subsists onely by the fiction of the Law, and for that reason the Law doth conclude as aforesaid; therefore the Statute of 25 E. 3. must be intended of the King's naturall person, conjoyned with the politick, which are inseparable; and the Kings naturall person being at Holmby, his politique is there also and not at Westminster; for the politique and naturall make one body indivisible.

Plow com. 213.

If all the people of *England* should break the League made with a foraign Prince, without the Kings consent, the League holds, and is not broken; and therefore the representative body is interiour to his Majesties.

19 Ed. 4. 46. 22 Edw. 4. Fitz. jurisdiction last placite.

The King may erect a Court of Common-Pleas in what part of the Kingdom he pleaseth, by his Letters-Patents,: Can the two Houses do the like?

1 *Edw. 5. fol.* 2. It cannot be said that the King doth wrong, declared by all the Judges and Sergeants at Law then there.

Edw. 5. 4 Edw. 4. 25. 5 Edw. 4. 29.

The reason is, nothing can be done in this Common-wealth by the Kings grant, or any other act of his, as to the Subjects Persons, Goods, Lands or Liberties, but must be according to established Laws, which the Judges are sworn to observe and deliver between the King and his people impartially to rich and poor, high and lowe; and therefore the Justices and the Ministers of Justice are to be questioned and punished if the Laws be violated: and no reflection to be made on the King. All Counsellors and Judges for a yeer and three moneths, until the tumults began, this Parliament, were all left

2 Pars instit 158.

to

to the ordinary course of Justice, what hath been done sithence is notorious.

R.3. *1.R.3.c.15.* For great Causes and considerations an Act of Parliament was made for the suretie of the said Kings person: if a Parliament were so tender of King *Rich.* the 3. the Houses have greater reason to care for the preservation of his Majestie.

H.7. *11.H.7.c.1.* The Subjects are bound by their Allegiance to serve the King, for the time being, against every Rebellion, power and might reared against him within this Land, that it is against all Lawes, reason and good conscience, if the King should happen to be vanquished, that for the said deed and true dutie and allegiance they should suffer in any thing: it is ordained they should not; and all Acts of processe of Law hereafter tobe made to the contrary are to be void: This Law is to be understood of the natural person of the King, for his politick capacity cannot be vanquished, nor war reared against it.

Relapsers are to have no benefit of this Act.

12.H.7.20. *4.H.7.18.* *Hen.8.* *7.H.7.14.* It is no Statute, if the King assent not to it and he may disassent; this proves the negative voice.

The

The King hath full power in all causes to do justice to all men; this is affirmed of the King, and not of the two Houses. 24.H 8 c.12 25.H.8.c.21.

The Commons in Parliament acknowledge no superiour to the King under God, the Houses of Commons confesse the King to be above the representative Bodie of the Realme.

Of good right and equitie the whole and sole power of pardoning treasons, felonies, &c. belong to the King, as also to make all Justices of Oyre and *Terminer*, Judges, Justices of the peace, &c. This Law condemnes the practice of both Houses at this time. 27.H.8 c.14 Note.

The Kings Royal Assent to any Act of Parliament signed with his hand, expressed in his Letters patents under the great Seal, and declared to the Lords and Commons shall be as effectual, as if he assented in his own person; a vain Act if the King be virtually in the Houses. 33.H.8.c. 12.

The King is the Head of the Parliament, the Lords the principal members of the Bodie, the Commons the inferiour members, and so the Bodie composed, therefore there is no more Parliament without a King, then there is a Bodie without a Head. Dier 38.H. 8.f.59 60.

There

1,4 H. 8. fol. 3. There is a Corporation by the Common Law, as the King, Lords and Commons, are a corporation in Parliament, and therefore they are no body without the King.

34 H. 3. 48. 1 Edw. 4. 2. The death of the King discharges all Mainprise to appear in any Court or to keep the Peace.

2 H. 4. 8. 1 H. 7. 10. 1 Edw. 5. 1. The death of the King discontinues all Pleas by the Common-law which agreeth not with the virtual power insisted upon now.

Edw 6. 1 Edw. 6. c. 7. Writs are discontinued by the death of the King; Patents of Judges Commission for Justices of the Peace, Sheriffs, Escheators, determined by his death: Where is the virtual power?

1 Edw. 6 c. 2. All authority and jurisdiction spiritual and temporal, is derived from the King, therefore none from the Houses.

2,3 Ed. 6. c. 2. 11 He. 7. c. 1. Calvins case. Sa pars Cook. 1 Pars instit. 69. His Majesties Subjects, according to their bounden duties, ought to serve the King in his Wars, on this side or beyond the Seas: beyond the Seas, is to be understood for wages. This proves the power of Wars, and preparation for War, to be in the King.

5,6 Ed. 6. 11. It is most necessary both for common policy, and duty of the Subject

to restrain all manner of shameful slanders against their King, which when they be heard, cannot but be odible to his true and loving subjects, upon whom dependeth the whole unity and universal weal of the Realm. This condemns their continuing of the weekly Pamphlets, which have been so foul mouthed against his Majesty.

The punishment of all offenders against the Laws, belongs to the King: and all Jurisdictions do, and right ought to belong to the King. This leaves all to his Majesty. Q. Mary. 1 Mar. Pl. 2. cap. 2.

All Commissions to levie men for the war, are awarded by the King: the power of war onely belongs to the King. 4, 5 P. M. c. 3.

It belongs to the King to defend his people, and to provide Arms and Force. No speech of the two Houses. Q. Eliz. 10 Eliz. Pl. 375.

Le Roy ad sole government de ses subjects. Le corps naturall le Roy & politique sunt un corps. That is, The King hath the sole government of his Subjects. The body politick and the natural body of the King, make one body, and not divers, and are inseparable and indivisible. Plow. 234. 242. 213. Calvins case 7 pars fol. 12. Tawe. com. 213.

The body natural and politick make

Plow. 934. 243. 213. *Calvins case. 7 pars fol.* 12.

make one body, and are not to be severed: Ligeance is due to the natural body, and is due dy nature, Gods Law, and mans Law, cannot be forfeited nor renounced by any meanes, it is inseparable from the person.

Every Member of the House of Commons, at every Parliament takes a corporall Oath: That the King is the supream and onely Governour in all causes in all his Dominions, otherwise he is no Member of the House; the words of the Law are in all causes over all persons.

1 *Eliz. cap.* 1 *Caudries. case* 5 *pars. fol.* 1.

The said Act of 1 *Eliz.* is but declarative of the ancient Law, *Caudries* Case *ibid.*

43. *Eliz.* 3. *pars institut fol.* 6. 2.

The Earl of Essex, and other assembled multitudes of men to remove Councellors, adjudged Treason by all the Judges of England.

39. *Eliz. Hil* 1 *Iacobi ibid.*

To depose the King, or take him by force, to imprison him untill he have yielded to certain demands, adjudged Treason, and adjudged accordingly in the Lord *Cobhams* Case.

39. *Ed. Brad. case fol.* 9. & 16. By all the Iudges of England, *ibid.* 10. *Eliz Plow.* 316.

Arising to alter Religion established, or any Law is Treason; so is taking of the Kings Castles, Forts Ports or shipping, *Brook* Treason 1 3. and 4. *Philip* and *Mary*, *Dier. Stafords* Case concerning *Scarborough.*

The Law makes not the servant greater then the Master, nor the subject greater then the King, for that were to subvert order and measure.

The Law is not known but by Usage, and Usage proves the Law, and how Usage hath been is notoriously known. 10. Eliz. Plow. 319.

The King is our only rightfull and lawfull Liege, Lord and Soveraigne, we doe upon the knees of our hearts agnize constant Faith, Loyalty and Obedience to the King and his Royal Progeny in this high Court of Parliament, where all the body of the Realm is either in person, or by representation: we do acknowledge that the true and sincere Religion of the Church is continued and established by the King, And do recognize, as we are bound by the Law of God and Man, the Realm of England and the Imperiall Crown thereof both belong to him by inherent birth right, and lawfull and undoubted succession, and submit our selves and our posterities for ever, untill the last drop of our blood be spent, to his rule and beseech the King to accept the same as the first fruits of our Loyalty and faith to his Majesty and his posterity for ever; & for that this Act is

K. James. 1 Jac. cap. 8 9. Ed. 4. fol. 1.

not

not compleat nor perfect without his Majesties assent, the same is humbly desired. This proves that the Houses are not above the King; that Kings have not their titles to the Crown by the two Houses, but by inherent birth-right; and that there can be no Statute without his expresse assent; and destroys the *chimæra* of the Kings virtual being in the Houses.

3 *Iac. cap.* 4. 23 *Eliz. c.* 1. To promise obedience to the Pope, or any other State, Prince or Potentate, other then the King, his Heirs and Successors, is treason; and therefore those persons who call the Houses the Estates, offend this Law.

K. *Charles.* Collection of Ordinances, *fol.* 727. Such Bills as his Majesty is bound in conscience and justice to passe, are no Law without his assent.

1 *pars ib. fol.* 728. To designe the ruine of the King's person, or of Monarchy, is a monstrous and injurious charge.

Ibid fol. 865. *Ubi Lex non distinguit, non est distinguendum:* all the aforesaid Acts and Laws do evidently prove the *Militia* to belong to the King: That the King is not virtually in the two Houses: That the King is not considerable separately in relation to his Politick capacity: That the King is not a person trusted with a power, but that it is his inherent Birth-right from God Nature

Nature, and Law, and that he hath not his power from the people: These Laws have none of those distinctions of naturall and politick, *abstractum & concretum*, power and person: in *Cesar*'s time this Island had Kings, and ever since, which is almost 1700 yeers agoe.

No King can be named, in any time made in this Kingdom by the people; A Parliament never made *King*, for they were Kings before: the Parliaments are summoned by the Kings Writs, which for Knights, Citizens and Burgesses begins thus, *viz.*

Rex Vic. Wilts. salutem. Quia Nos de avisamento & assensu Consilii nostri pro quibus. arduis & urgentib. negotiis Nos statum & defensionem Regni n'ri Ang. & Eccles. Anglic. concernentius quoddam Parliamentum nostrũ apud B. *teneri ordinavimus, & ibid. cum Prælatis, Magnatib. & Proceribus dicti Regni nostri colloquium habere & tractatum, vobis præcipimus firmiter injungendo qd. facta Proclamatione in*

prox. Comitatu tuo post receptionem ejusd. Brevis, duos Milites gladiis cinctos, &c. eligi facias, ad faciendum & consentiendum hiis quæ tunc ibidem de Communi Concilio n'ro Angl. favente Deo, contigerit ordinari super Negotiis antedictis, ita quod pro defectu potestatis hujusmodi, seu propter improvidam electionem Milium Civium, & Burgensium prædicta negotio n'ra, infecta non remanerent.

4 pars Instit. 241.

4 pars Instit. fol 3 & 4.

The King is *principium, caput, & finis Parliamenti,* the body makes no the head, nor that which is *posterior* that which is *prior*, *consilium non est Præceptum, Consiliarii non sunt Præceptores*, for Counsel to compell a consent hath not been heard of to this time in any age; and the House of Commons, by the Writ, are not called *consilium*; the Writs to the twelve Judges, Kings Councell, twelve Masters of the Chancery are *consilium* dispensuri, and so of the Peers. The Writs for the Comminalty, *Ad faciendum & consentiendum*: Which shew what power the representative Body

hath; they have not power to give an Oath, neither do they claim it.

The King at all times when there is no Parliament, and in Parliament is assisted with the advice of the Judges of the Law, 12 in number, for England at least hath two Sergeants when fewest; an Atturney and Solicitour, twelve Masters of the Chancery, his Councell of State consisting of some great Prelates, and other great Personages, versed in State affairs, when they are fewest to the number of twelve. All these persons are alwayes of great substance, which is not preserved, but by the keeping of the Law; The Prelates versed in divine Law, the other Grandees in affairs of State, and managery of Government; The Judges, Kings Sergeants, Attourney, Solicitor, and Masters of the Chancery versed in the Law and Customs of the Realm; All sworn to serve the King and his people justly and truly: The King is also sworn to observe the Laws, and the Judges have in their Oath a clause, that they shall do common right to the Kings people, according to the established Lawes, notwithstanding any command of the King to the contrary, under the great Seal,

The Oath of the Iustices 18 of E.3.a. among Statutes of that yeer.

or otherwise, the people are safe by the Laws in force, without any new: The Law finding the Kings of this Realm assisted with so many great men of Conscience, Honour, and skill in the rule of Common-wealth, knowledge of the Lawes, and bound by the high and holy bond of an Oath upon the Evangelists, settles among other powers upon the King, a power to refuse any Bill agreed upon by both Houses, and power to pardon all offences, to passe any Grants in his Minority, (there are many great persons living hold many a thousand pound a yeer by Patents from *Edw.* the Sixth, passed when he was but ten yeers of age) not to be bound to any Law to his prejudice, whereby he doth not binde himself; power of War and Peace, coyning of Mony, making all Officers, &c. The Law, for the reasons aforesaid, hath approved these powers to be unquestionable in the King, and all Kings have enjoyed them til 3. *Nov.* 1640.

It will be said, notwithstanding all this fence about the Laws, the Laws have been violated, and therefore the said powers must not hold: the two Houses will remedy this.

The answer to this is evident: There

There is no time past, nor time present, nor will there be time to come, so long as men mannage the Law; but the Laws will be broken more or lesse, as appears by the story of every age. All the pretended violations of this time were remedied by Acts to which the King consented before his departure, 10. *Jan.* 1641. being then driven away by Tumults: And the Houses for a yeer and almost three months, from 3 *Nov.* 1640, to 10 *Jan.* 1641, as aforesaid, being a yeer and almost three months, had time and liberty to question all those persons who were either causes or instruments of the violation of any of the Laws.

Examine how both Houses remedied them in former times. First, touching Religion; What hath been done this way? Both Houses in *Henry* the Eighth's time tendered to him a Bill to be passed, called commonly the Bill of the Six Articles: this was conceived by them to be a just and a necessary Bill: Had not *Henry* the Eeghth done well to have refused the passing of this Bill? Both Houses tendered a Bill to him to take the reading of the Scriptures from most of the Laity: Had not King *Henry* the

Eighth deſerved much praiſe to reject this Bil? In Queen *Mary*'s time both Houſes exhibited a Bill to her to introduce the Popes power and the Roman Religion; had not Queen *Mary* done well to have refuſed this Bill? Many ſuch inſtances may be given. The *two Houſes* now at *Weſtminſter* I am ſure will not deny but the refuſall of ſuch Bils had been juſt, the King being aſſiſted as aforeſaid: and why not ſo in theſe times?

For the Civil Government, what a Bill did both Houſes preſent to *Richard* the third, to make good his Title to the Crowne? had it not been great honour to him to have rejected it? What Bils were exhibited to *Henry* the Eighth by both Houſes for baſtardizing of his Daughter *Elizabeth*, a Queen of renowned memory, to ſettle the Crown of this Realme for default of Iſſue of his body, upon ſuch perſons as he ſhould declare by his Letters Patents, or his laſt will, and many more of the like: had not this refuſall of paſſing ſuch Bils magnified his vertue, and rendered him to poſterity in a different Character from what he now hath?

And by the experience of all time and the conſideration of human

frailty

frailty, this conclusion is manifestly deduced, that it is not possible to keep men at all times (be they the Houses, or the King and his Councell) but there will be sometimes some deviation from the Lawes; and therefore the constant and certain powers fixed by the ancient Law must not be made void; and the Kings Ministers the Laws do punish where the Law is transgressed, and they onely ought to suffer for the same.

In this Parliament the Houses exhibited a Bill to take away the suffrages of Bishops in the upper House of Parliament, and have sithence agreed there shall be no more Bishops at all, might not the King if he had so pleased have answered this Bill with *Le Roy's avisera*, or *ne veult?* it was against *Magna Charta*, *Articuli Cleri*, and many other Acts of Parliament. And might have further given these reasons, if it had so pleased him for the same: First, that this Bill destroyes the Writ whereby they are made two Houses of Parliament, 14. *Hen.* 7. *fol.* 22. *Evésq; est signior de grand honneur*, the King in the Writ being *cum Prælatis colloquium habere*: Secondly, they have been in all Parliaments since we had any, and voted, but in

such wherein they themselves were concerned: And there have been Bishops here sithence we were Christians, and the Fundamental Law of the Kingdom approves of them: If any of them were conceived offensive, they were left to justice, and his Majesty would put in inoffensive men in their places; but sithence his Majesty hath passed the Bill for taking away their Votes in Parliament, it is a *Law* that binds us so far.

Upon the whole matter, the Law hath notably determined that Bils agreed by both Houses, pretended to be for the publick good, are to be judged by the King; for in all Kings reigns Bils have been preferred by both Houses, which always are pretended to be for the publick good, and many times are not, and were rejected with *Roy' avisera*, or *Roy ne veult*.

This Parliament began the 3 of *Novemb* 1640: before that time in all the Kings reign no armed power did force any of the people to do any thing against the Law; what was done, was by his Judges, Officers Referes and Ministers; from that time until the tenth of *Jan.* 1642, when the King went from *London* to avoid the danger of frequent tumults, being a

yeer

yeer and three months, Privie Counsellors, and all his Justices and Ministers were left to the justice of the Law; there wanted not time to punish punishable men.

The Sphere of the House of Commons is to represent the grievances of the Country, to grant aids for the King upon all fit occasions extraordinary, to assent to the making or abrogating of Laws: The Orb of the House of Lords to reform erroneous judgments given in the Kings Bench, to redresse the delays of Courts of Justice, to receive all Petitions, to advise his Majesty with their counsell, to have their Votes in making or abrogating of Laws, and to propose for the common good, what they conceive meet.

Lex non cogit ad impossibilia, Subjects are not to expect from Kings impossible things; so many Judges, Counsellours, Sheriffs, Justices of the Peace, Commissioners, Ministers of State, that the King should over-look them all, cannot be, it is impossible.

The King is virtually in his ordinary Courts of Justice, so long as they continue his Courts: their charge is to administer the Laws in being, and not to delay, defer, or

sell justice for any Commandement of the King. Wee have Lawes enough; *Instrumenta boni sæculi sunt boni viri*; good Ministers, as Judges, and Officers, are many times wanting; the Houses propose new Laws, or abrogation of the old, both induce novelty; the Law for the reasons aforesaid, makes the King the only Judge, who is assisted therein by a great number of grave, learned and prudent men as aforesaid.

For the considerations aforesaid the Kings Party adhered to him, the *Law* of the Land is their *Birth-right*, their *Guide*; no offence is committed where that is not violated: they found the Commission of *Array* warranted by the Law; they found the King in this Parliament to have quitted the *Ship-money*, *Knighthood-money*, *seven Courts of Justice*, consented to a *Trienniall Parliament*, settled the *Forest bounds*, took away the *Clerk of the Market* of the Houshold, trusted the House with the *Navy*, passed an *Act not to dissolve this Parliament* without the Houses assent; no people in the world so free, if they could have been content with *Laws*, *Oaths*, *and Reason*: and nothing more could or can be devised to secure us, neither

ther hath been in any time.

Notwithstanding all this, we found the King driven from *London* by frequent tumults, that two thirds and more of the Lords had deserted that House for the same cause, and the greater part of the House of Commons left that House also for the same reason, new men chosen in their places against *Law* by the pretended Warrant of a *counterfeit Seal*, and in the Kings name against his consent, levying Warre against him, and seizing his Ports, Forts, Magazines and Revenue, and converting them to his destruction, and the subversion of the Law and Land, laying Taxes on the people, never heard of before in this Land; devised new Oaths to oppose Forces raised by the King, nor to adhere to him, but to them in this War; which they call the *Negative Oath*, and the *Vow and Covenant*.

By severall wayes never used in this Kingdom they have raised monies to foment this Warre, and especially to enrich some among them: namely, first, *Excise*; secondly, *Contributions*; thirdly, *Sequestrations*; fourthly, *Fifth parts*; fifthly, *Twentieth parts*; sixthly, *Meal-money*;

seventh-

seventhly, *Sale of plundered goods*; eighthly, *Loanes*; ninthly, *Benevolences*; tenthly, *Collections upon their Fast dayes*; eleventhly, *New Impositions upon Merchandizes*; twelfthly, *Guards maintained upon the charge of private men*; thirteenthly, *Fifty Subsidies at one time*; fourteenthly, *Compositions* with such as they call Delinquents; fifteenthly, *Sale of Bishops Lands*, &c.

1. R. 3. cap 3. Bract. l. 3. c. 8 Stanford 192. 1 Ger. Fleetwoods Case 8. pars Cook 7. H. 4 last leafe.

From the Kings Party means of subsistence are taken; before any indictment, their lands seized, their goods taken: the Law allows a Traitour or Felon attainted *necessaria sibi & familiæ suæ in victu & vestitu*: where is the Covenant? where is the Petition of Right? Where is the Liberty of the Subject?

First, wee have aided the King in this War contrary to the Negative Oath, and other Votes: Our warrant is the twenty fifth of *Edward* the third, the second Chapter, and the said resolutions of all the Judges.

4. pars Instit. 125 2 Inst. 696. The law so at the Edition of that Book. Hetton and Crook.

Secondly, we have maintained the Commission of *Array* by the Kings command, contrary to their Votes: Wee are warranted by the Statute of the fifth of *Henry* the fourth, and the judgement of Sir *Edward Cook*, the Oracle

Oracle of the Law, as they call him.

Thirdly, we maintained *Arch-Bishops and Bishops*, whom they would suppresse. Our warrant is *Magna Charta*, and many Statutes more.

Fourthly, Wee have maintained the Book of *Common Prayer*; they suppresse it: Our warrant is five Acts of Parliament in *Edward* the sixth and Queen *Elizabeths* time, 5 *Pesche* 35, *Elizabeth inter placita Coronæ in Banco Regis*, New Book of Entries, *fol* 252. *Penry*, for publishing two scandalous Libels against the Church-Government, was indicted, arraigned, attainted, and executed at Tyburn.

Fifthly, We maintained the *Militia* of the Kingdom *to belong to the King*; they the contrary: Our warrant is the Statute of the seventh of *Edward* the first, and many Statutes sithence, the practice of all times, and the Custome of the Realm.

Sixthly, We maintained the *counterfeiting of the great Seal to be high Treason*, and so of the usurpation of the *Kings Forts, Ports, Shipping, Castles, and his Revenue, and the Coyning of Money*, against them: Wee have our warrant by the said Statute of the

twenty

twenty fifth of *Edward* the Third, Chapter the second, and divers others since, and the practice of all times.

Seventhly, Wee maitain, that the *King is the onely supreme Governour in all causes:* They, that his Majesty is to be governed by them: Our warrant is the Statutes of the first of Queen *Elizabeth*, Chapter the first, and the fifth of Queen *Elizabeth*, the first.

9 Ed. 4. fol. 4.

Eighthly, Wee maintain that the *King is King by an inherent birth-right, by nature, by Gods Law, and by the Law of the Land.* They say his Kingly right is an Office upon trust: Our warrant is the Statute of the first of King *James*, Chapter the first; and the resolution of all the Judges of *England* in *Calvin's* Case.

Ninthly, Wee maintain that the *politick capacity is not to be severed from the naturall.* They hold the contrary: Our warrant is two Statutes (*viz.*) *exilium Hugonis* in *Edward* the seconds time, and the first of *Edward* the third, Chapter the second, and their Oracle, who hath published it to Posterity, that *it is damnable, detestable, and execrable Treason; Calvins* Case, *pars* 7. *fol.* 11.

Tenthly,

Tenthly, We maintain, that *who aids the King at home or abroad, ought not to be molested or questioned for the same.* They hold and practise the contrary; Our warrant is the Statute of the eleventh of *Henry* the seventh, Chapter the first.

Eleventhly, We maintain, that *the King hath power to dissassent to any Bill agreed by the two Houses*; which they deny: Our warrant is the Statute of the second of *Henry* the fifth, and the practice of all times; the first of King *Charles* Chapter the seventh, the first of King *James* Chapter the first.

Twelfthly, We maintain, that *Parliaments ought to be holden in a grave and peaceable manner, without tumults*: They allowed multitudes of the meanest sort of the people to come to *Westminster* to cry for justice when they could not have their will, and keep guards of armed men to wait upon them: Our warrant is the Statute of the seventh of *Edward* the second, and their Oracle. Collect. of Ord. *fol.* 31

Thirteenthly, We maintain, that *there is no State within this Kingdome but the Kings Majesty*, and that *to adhere to any other State* within this kingdom is *high Treason*: Our warrant is the

the Statute of the third of King *James*, Chapter the fourth, and the twenty third of Queen *Elizabeth*, Chapter the first.

Fourteenthly, Wee maintaine, that *to levie a Warre to remove Counsellours, to alter Religion, or any Law established, is high Treason*; They hold the contrary: Our warrant is the resolutions of all the Judges of *England* in Queen *Elizabeths* time, and their Oracle agrees with the same.

Fifteenthly, Wee maintain, that *No man should be imprisoned, put out of his lands, but by due course of Law; and that no man ought to be adiudged to death, but by the Law established, the Customes of the Realme, or by Act of Parliament*; They practise the contrary in *London*, *Bristol*, *Kent*, *&c.* Our warrant is *Magna Charta*, Chapter the twenty ninth, the *Petition of Right*, the third of King *Charles*, and divers Lawes there mentioned.

Wee of the *Kings Party did and do detest Monopolies*, *and Ship-money*, and all the *grievances of the people as much as any men living*; wee do well know, that our estates, lives and fortunes are preserved by the Laws, and

that

that the King is bound by his Laws; wee love Parliaments: if the Kings Judges, Councell, or Ministers have done amisse, they had from the third of *November* 1640, to the tenth of *January* 1641, time to punish them, being all left to justice, *Where is the Kings fault?*

The Law saith, *The King can do no wrong*, that hee is *Medicus Regni, Pater Patriæ, Sponsus Regni, qui per annulum* is espoused to his Realm at his Coronation; the King is Gods Lieutenant, and is not able to do an unjust thing: these are the words of the Law.

11 *Pars Cooks Reports. Magdalen Colledge* Case

One great matter is pretended, that the People are not sure to enjoy the Acts passed this Parliament, a succeeding Parliament may repeal them: The objection is very weak; a Parliament succeeding to that may repeal that repealing Parliament: That fear is endlesse and remedilesse, for it is the essence of Parliaments being compleat, and as they ought to be, of Head, and all the Members, to have power over Parliaments before: Parliaments are as the times are; If a tumbulent faction prevails, the Parliaments are wicked, as appears by the examples recited before of extreme

wicked

wicked Parliaments; if the times be sober and modest, prudent & not biassed, the Parliaments are right, good, and honourable, and they are good medicines and salves; but in this Parliament *excessit medicina modum.*

In this cause and War between the Kings Majesty and the two Houses at *Westminster*, what guide had the Subjects of the Land to direct them *but the Laws?* What means could they use to discern what to follow, what to avoid, but the Laws? The King declares it *Treason* to adhere to the Houses in this War: the Houses declare it *Treason* to adhere to the King in this War: The Subjects for a great and considerable part of them (Treason being such a crime as forfeits life and estate, also renders a mans Posterity base, beggarly, and infamous) look upon the Laws, and finde *the letter of the Law requires them to assist the King*, as before is manifested; was ever Subject criminally punisht in any age or Nation for his pursuit of what the Letter of the Law commands?

The Subjects of the Kingdome find the distinction and interpretation now put upon the Laws of *Abstractum and Concretum*, Power and Person,

ſon, body politick and naturall, perſonall preſence and virtuall, to have been condemned by the Law; and ſo the Kings Party had both the Letter of the Law, and the interpretation of the letter cleered to their judgments, whereby they might evidently perceive what ſide to adhere to: what ſatisfaction could modeſt, peaceable, and loyall men more deſire?

A verbo legis in criminibus & pœnis non eſt recedendum, hath been an approved maxime of Law in all ages and times: If the King be King and remain in his Kingly Office (as they call it) then all the ſaid Laws are againſt them without colour: they ſay the ſaid Laws relate to him in his Office, they cannot ſay otherwiſe; they make Commiſſions and pardons in the Kings name, and the perſon of the King and his Body politick cannot, nor ought to be ſevered, as hath been before declared: And *the Members of both Houſes have ſworne conſtantly in this Parliament that the King is the onely ſupreme Governour in all cauſes over all perſons at this preſent time.*

Coll. of Ord 777

5 El. cap. 1
1 El. cap. 1

For what of verball or perſonall commands of the King which is objected,

jected; we affirm few things to be subject thereto by the Law: but his Majesties Command under his great Seal, which in this War hath been used by the Kings command for his Commission to leavy and array men, that is no personall command (which the Law in some cases disallowes) but that is such a command, so made, as all men hold their Lands by, who hold by Patents; all Corporations have their Charters which hold by Charters, and all Judges and Officers their places and callings.

Ob. It is objected, The King cannot suppresse his Courts of Justice, and that this war tended to their suppression.

Sol. The answer is, The King cannot nor ought to suppresse Justice, or his Courts of Justice, nor ever did; but Courts of Justice by *abuser or non user* cease to be Courts of Justice; when Judges are made, and proceedings in those Courts holden by others then Judges made by the King, and against his command under the great Seal, and his Majesty is not obeyed, but the Votes of the Houses, and his Judges breaking that condition in Law, of trust and loyalty, implied in their Patents, are no longer his Judges;

7 pars The Earle of Westmorelands Case. *1 Eliz. Dier. 165. 7 pars Cook.* The case of discontinuance of processe.

ges; they obey, and exercise their places by vertue of Writs and Processes under a counterfeit Seal: The King onely can make Judges, the twenty seventh of *Henry* the eighth, Chapter the twenty fourth, *Justices of the Peace*, &c. The Kings Patent makes Judges: The chief Justice of the Kings Bench is made by the Kings Writ onely of all the Judges.

28. H. 8. Diet 11.

The *Great Seale* is the key of the Kingdome, and meet it is that *the King should have the key of his Kingdom about him:* which confutes their saying, that the King got the Seal away surreptitiously.

Articuli super chartas cap. 5. 2 pars instit. 552.

The King, and he onely may remove his Courts from *Westminster* into some other place: at *York* the Terms were kept for seven yeers in *Edward* the first's time; but for the Court of Common-Pleas, the place must be certain: for the Kings Bench and Chancery, the King by the Law may command them to attend his Person always, if it seem so meet unto him; but the removing of the Common-Pleas must be to a place certain, and so notified to the people.

Britton fol. 23.

All the books of Law in all times agree, that the King may grant conusance

sance of all Pleas at his pleasure within any County or Precinct to be holden there onely, and remove the Courts from *Westminster* to some other place (for the Common-Pleas, the place must be certain, and so notified to the people), and adjourn the Terms as hee sees cause: All which the two Houses have violated.

6 H.7.9.
6 El. Dier. 226

Some

Some seeming Objections of Master Pryn's, *scattered in divers books answered, and the truth thereby more fully cleered.*

THE first of *Henry* the fourth revived the Statute of the eleventh of *Richard* the second, and repeals the one and twentieth of *Richard* the second, whereby certain persons were declared Traitours to the King and kingdome, being of the Kings Party, by 11. *Rich.* 2. *1 Ob.*

True, but note, the eleventh of *Richard* the second, a Parliament beset with 40000 men, and the King assents to it, so an Act; and besides, the first of *Henry* the fourth declares, that the Treasons mentioned in the Act of the eleventh of *Richard* the second, being but against a few private men, shall not be drawn into example, and that no Treason should be, but such as the twenty fifth of *Edward* the third declares: All these are Acts passed by the King, and the three Estates, nor to be drawn into examble in a tumultuous time, by a besieged Parliament, with an Army; and *Sol.* *9 Ed. 4 fol. 80.*

Henry

Henry the fourth being an usurper, makes that Act of the first of *Henry* the fourth to secure himself: Also what is this to the Votes of the two Houses onely at this time?

2 *Ob.* The Court of Parliament is above the King, for it may avoid his Charters, Commissions, *&c.* granted against the Law.

And the Law is above the King.

Sol. By the same reason you may say that the Courts of Chancery, or any of the Courts of Law at *Westminster* are above the King, for they make of no effect the Kings Charters, which are passed against the Law; and the King is subject to Law, and sworn to maintain it. Again, it is no Parliament without the King, and the King is the head thereof; he is *principium, caput, & finis* of a Parliament, as *Modus tenendi Parliament.* hath it; and two Houses onely, want *principium, caput & finis* of a Parliament; and it is a sorry Parliament that wants all these: And therefore to say that Parliaments are above the King, is to say the King is above himself.

3 *Ob.* The Parliament can enlarge the Kings Prerogative; therefore it is above him.

Sol. If the King assent, otherwise not; and

and then it is an Act of Parliament, and otherwise no Act.

Bracton saith, God, the Law, and the Kings Court, (*viz.*) his Earles and Barons are above the King, *viz.* in Parliament as Mr. *Prinne* expounds it. 4. Ob.

Where is then the House of Commons? Indeed, take God, the Law, and Earles and Barons together, it is true; but to affirm that the Earles and Barons in Parliament are above the King (the King being the head of the Parliament, and they one of the members) how an inferiour member is above the head, is hard to conceive; besides that position destroyes all Mr. *Prinnes* discourse, who attributes so much to the House of Commons. Sol.

The King is but one of the three Estates of Parliament, and two are greater then one; therefore above. 5. Ob.

The Legs, Armes, and Trunke of the body are greater then the Head, and yet not above, nor with life without it; the argument holds for quantity, but not for quality, and in truth, the King is none of the three Estates but above them all; the three Estates are, the Lords Spirituall, the Lords Temporall, and the Commons; *Coke*, their Oracle, in his Chap. of Parl. *f.* 1. Sol.

In Corporations, the greater num-

6. Ob. ber of voyces make all the Acts of the Corporation valid; therefore so in Parliament.

Sol. By this reason the Kings assent is needlesse, and to no end, and all the Acts of Parliament formerly mentioned, and Law-bookes have quite mistaken the matter, which with unanimous voice requires the Kings assent as necessary: besides, the Corporations are so constituted by the Kings Charters, and the greater number of Votes shall make their Acts valid.

7. Ob. The King, as King, is present in his Parliament as well as in all other his Courts of Justice, howbeit he is not there.

Sol. In his other Courts of Justice he hath no voice, he is none of the Iudges, in the Parliament he hath; if his presence be not necessary, his voice is not, nor his assent.

8. Ob. Soversign power of Parliaments, 49. 74. Sol. The originall prime legislative power of making Lawes, to bind the Subiects and their posterity rests not in the King, but in the Kingdome and Parliament, which represents it.

Master *Prinne* in the same leaf affirmes, and truly, that the Kings assent is generally requisite to pass Lawes and ratifie them; the King is

the Head of the Kingdome and Parliament, how then can a Body act without a Head?

A major part of a Corporation binds, therefore the major part in Parliament, and so of by Lawes. 9. Ob.

The Corporation is so bound either by the Kings Charters, or by prescription, which somet.mes had the Kings concession; but prescription, and Law, and practise, alwayes left the King a negative voice. Sol.

The King cannot alter the Bills presented to him by both Houses, go. 10. Ob.

True, but the King may refuse them. Sol.

Acts of Parliament and Lawes ministred in the Raignes of Usurpers, bind rightfull Kings, go. 11. Ob.

What is this to prove the two houses power only, which is the question? Sol.

A King *de facto* must be obeyed by them who submitted to him, and they are his Subjects by their submission, and not Subjects *de facto* to the true King, and such being Traytours and Rebells to the Regent King (having renounced the true King) when the lawfull King is restored, may be punished by him for their Treason against the Vsurper: But heere is a King still in both cases, and the proceedings 9. E. 4. 12.

ceedings at Law holds, the Iudges having their Patents from the being Kings, in the Raignes of Kings, *de facto* or *de jure*, for all Kings are bound, and sworne to observe the Lawes.

12. Ob. A King dies without Heire, is an Intant, *non compos mentis, &c.* the two Houses may establish Lawes, go.

Sol. There is no *Inter regnum* in England, as appeares by all our Bookes of Law; and therefore the dying without Heire is a vaine supposition, and by their principle he is considerable in his politick capacity, which cannot die at all: The protectour assisted by the Councell of the King at Law, his twelve Iudges, the Councell of State, his Attorney, Solicitor, and two Serjeants at Law, his twelve Masters of the Chancery, hath in the Kings behalf, and ever had a Negative Voice, but what is this to the present question? We have a King of full age of great wisedome and judgement, the power of the two Houses in such a case to be over the King, cannot be shown.

13. Ob. The King cannot dis-assent to publique and necessary Bills for the common good, go.

Sol. Nor ever did good King; but w

shall be judge, whether they be publique and necessary? The *major* part in either of the Houses, for passing of Bills so pretended, may be but one or two voices, or very few, and perhaps of no judicious men: is it not then fitter or more agreeable to reason, that his Maiesty and Councell of State, his twelve Iudges, his Sergeants, Attorney, and Solicitor, twelve Masters of the Chancery, should judge of the conveniency and benefit of such Bills for the publick good, rather then a *minor*, (of which sort there may be in the Houses) or a weake man, or a few, who oftentimes carry it by making the *major* part, which involves the consent of all? Let reason determine.

The Kings of *England*, have been elective; and the King by his Coronation Oath is bound to maintaine *ea stas leges & consuetudines quas vulgus elegerit*, go. 14. Ob.

Popery hath been in the kingdome, and therefore to continue it still, will not be taken for a good argument; when things are setled for many ages, to looke back to times of confusion is to destroy all repose: The Act of Parliament of the 1. of K. *James*, Chapter the first, and all our Sol.

extant Lawes say, that the Kings Office is an heritage inherent in the blood of our Kings, and their birthright.

1 E.4.c.1. And Vsurpers that come in by the consent of the people, are Kings *de facto*, but not *de jure*, as appeares by the Acts of Parliament declaring them so; and by all our Law books and the fundamentall constitution of the Land, Regall power is heriditary and not elective.

1. Hen. 7. For the words (*vulgus elegerit*) if *vulgus* be applyed to the House of Commons, they of themselves can make no Lawes: The Peeres were never yet tearmed *vulgus*; but allowing they be so called, the Lawes to be made be just, and who is fit to judge thereof is before made evident.

15. Ob. Customes cannot referre to future time, and both are coupled, Lawes and Customes.

Princes have been deposed, and may be by the the two Houses, go.

Sol. The Deposers were Traytors as appeares by the resolution of all the Iudges of *England*; *Coke*, Chap. Treason, in the second part of the *Institutes*: And never was King deposed but in tumultuous and mad times, and by the power of Armies

an

and they who were to be the succeeding Kings in the head of them, as *Edward* the third, and *Henry* the fourth.

The appeale to the Parliament for errours in iudgements in all Courts is frequent, go. 16. Ob.

This is onely to the House of Lords, and that is not the Parliament; the House of Commons have nothing to doe therewith; and in the House of Peeres, if a Writ of Errour be brought to reverse any judgement, there is first a petition to the King for the allowance thereof, and the reason of the Law in this case is, for that the Iudges of the Land all of them, the Kings Councell, and twelve Masters of the Chancery assist there, by whose advice erronious judgements are redressed. Sol.

The Parliaments have determined of the rights of Kings, as in *Henry* the sixes time, and others, and Parliaments have bound the succession of Kings, as appeares by the Statute of the thirteenth of Queene *Elizabeth*, Chapter the first: And the discent of the Crown is guided rather by a Parliamentary Title then by Common Law, go. 17. Ob.

If this objection be true, that the Sol.

Title to the Crowne is by Parliament, then we had no Vsurpers, for they all had Parliaments to back them; yea, **Richard** the third, that Monster. All our Bookes of Law say they have the Crowne by discent, and the Statutes of the Land declare, that they have the same by inherent birth-right. And the Statute of the thirteenth of **Elizabeth**, the first Chapter, was made to secure Queene **Elizabeth** against **the Queene of Scots**, then in the Kingdome, clayming the Crowne of **England**, and having many adherents: And that Statute to that end affirmes no such power in the two Houses (which is the question) but in Queen **Elizabeth**, and the two Houses, which makes against the pretence of this time.

Master **Prynne**, *fol.* 104. of his booke, intituled, **the Parliaments supreme power**, *&c.* Objecting the Statute of the first of **Queene Elizabeth**, and his owne Oath, that the King is the only supreme Governour of this Realme; Answers, The Parliament is the supreme power, and the King supreme Governour: And yet there **he allowes him a Negative Voice**; and *fol.* 107. confesseth that

that Acts of Parliament translated the Crowne from the right Heires at Common-law, to others who had no good Title, then the Parliamentary Title makes not the King, so powerfull is truth, that it escapes from a man unawares: To make a distinction betweene supreme Governour, and supremepower, is very strange, for who can govern without power?

The King assembles the Parliament by his Writ, adjournes, prorogues, and dissolves the Parliament, by the law at his pleasure, as is evident by constant practise, the House of Commons never sate after an adjournment of the Parliament by the Kings command: Where is the supreme power? Vide speed 645.4.pa. Inst.27.& 2.

The King by his Oath, is bound to deny no man right, much lesse the Parliament, to agree to all just and necessary lawes proposed by them to the King. This is the substance of the discourse against the Kings Negative Voyce. 18. Obj.

The King is so bound as is set downe in the Objection; but who shall judge whether the bill proposed be just and necessary? For all that they doe propose are so pretended and Sol.

carried in either House, sometimes by one or two Voyces; or some few as aforesaid, and certainely as hath been shewen, the King, his Counsell of State, his Iudges, Sargeants, Attorney, Solicitor, and twelve Masters of the Chancery can better judge of them, then two or three, or few more.

Mr. Prynne *fol.* 45. *In* his booke of the *Parliaments* interest to nominate Privie Couucellours, calleth the opini- of the **Spencers to divide the Person of the King from his Crown, a strange opinion**, and cites **Calvins** Case, but leaves out the conclusions therein mentioned, *fol.* 11. *Master* Prynne saith there, but let this opinion be what it will; without the Kings Grace and Pardon it will goe very far, and two Acts of Parliament there mentioned are beyond an opinion: And in his booke of the opening of the Great Seale, fol. 17. The *Parliament* hath no jurisdiction to use the Great Seale for *Pardons* Generall or Particular. Where is the supreme power then?

Calvins case 7. pa. f ol.

19. *Ob.* Master *Prynnes* (opening of the Seale) **pag.** 19. saith, the Noblemen and State, the day after the Funerall of King **Henry** the third (King **Edward**

ward the first his sonne being in the Holy Land) made a new Great Seale, and Keepers of the same; And in Henry the sixts time, in the first yeare of his Reigne, the like was done in Parliament.

A facto, ad ius, it is no good Argument, for that in Edward the firsts time, it was no Parliament, for King Henry the third was dead, which dissolved the Parliament, if called in his time, and it could be no Parliament of Edward the firsts time, for no Writ issued to summon a Parliament in his Name, nor could issue but under the New Seale, it was so suddainely done after Henry the thirds death, King Edward the first being then in the Holy Land, it was the first yeare of his Reigne: and no Parliament was held that yeare, nor the second yeare of his Reigne: The first Parliament that was in his Reigne, was in the third yeare of his Reigne, as appeares by the printed Acts: Also the making of that Seale was by some Lords then present; What hand had the Commons in it? Concerning the Seale made in Henry the sixths time, the Protector was Vice-Roy according to the course of law, and so the making *Sol.*

of that Seale was by the Protector in the Kings name, and that Protector, Humphry Duke of Gloucester, as Protectour, in the Kings Name summoned that Parliament, and was Protector made by the Lords, and not in Parliament, as appeareth plainely, for that Parliament was in the first of Henry the sixth, and the first holden in his time, and power given by Commission to the said Duke, then Protector, to summon that Parliament, Prynne *ibid. fol.* 19. But the new counterfeit Seale was made when the King was at Oxford, in his owne kingdome, and not in the holy Land.

20. Ob. Master Prynne in his booke of the two Houses power to impose Taxes, restraines Malignants against any *Habeas Corpus*, &c. saith, that the Parliament is above *Magna Charta*, and *fol.* 15. *ibid.* The Parliament hath power over *Magna Charta* to repeale the same when there is Cause.

Sol. This Argument supposeth that they have the Kings power, which hath appeared formerly they have not: But suppose they had, *Magna Charta* containes many Morall Lawes, which by the Law of the Land a Parliament cannot alter, 21. H. 7. 2. D. and

Student, 2. Dialogue For example, it saith *chap.* 18. Justice shall not be sold, delayed, nor denyed to any man; but by this Argument the Parliament may make law to delay, deny, and to sell Justice, which surely is a very ill position to maintaine.

What they would have, doth now by the Propositions sent to Newcastle to his Majestie appeare, whereby they would have him divest himself, and settle in them all his Kingly power by Sea and Land, and of themselves to have power, without him, to lay upon the people of this Land what Taxes they thinke meet, to abolish the Common prayer-booke, to abolish Episcopacie, and to introduce a Church Government not yet agreed, but such as they shall agree on.

His Maiesty finding a prevailing party in both Houses to steere this course, and being chased away with Tumults from London, leaves the Houses for these Reasons, (*viz.*)

First, because to alter the Government for Religion, is against the Kings Oath.

Secondly, against their Oaths: For every of them hath sworne in this Parliament, That His Maiesty

is

is the only supreme Governour in all Causes Ecclesiasticall and over all persons.

Thirdly, this course is against *Magna Charta*, the 1. Chap. and the last *Salvæ sint Episcopis omnes libertates suæ*, Confirmed by thirty two Acts of Parliament: and in the two and fortieth of **Edward** the third, the first Chapter enacts, if any Statute be made to the contrary, it shall be holden for none: and so it is for judgements at Law, in the 25. of **Edward** the 1. chap. 1, 2. The Great Charter is declared to be the Common Law of the Land.

Fourthly, **they endeavour to take away** by their Propositions, **the Government of Bishops**, which is as ancient as Christianity in this Land, and the **Booke of Common-prayer** settled by five Acts of Parliament, and compiled by the **Reformers and Martyrs**, and practised in the time of **foure Princes**.

Fifthly, these Propositions taking away from his Majesty **all his power by land and Sea**, rob him of that which all his Ancestors, Kings of this Realme, have enjoyed: That enjoyment and usage makes the Law, and a Right by the same to his Majesty.

They

They are against their owne Protestations made this Parliament, (*viz.* to maintaine his Royall Person, Honour, and Estate; They are against their Covenant, which doth say, that they will not deminish his just power and Greatnes.

For these reasons his Majesty hath left them, and as is believed will refuse to agree to the said Propositions, as by the fundamentall Law of the Land he may, (having a Negative voice) to any Bills proposed.

The result of all is upon the whole matter: That the King thus leaving of the Houses, and his denyall to passe the said propositions, are so far from making him a Tyrant, or not in a condition to govern, at the present; that thereby he is rendred a just, Magnanimous, and pious Prince: so that by this it appeares clearly to whom the Miseries of these times are to be imputed. The remedy for all, is, an Act of Oblivion, and a Generall pardon.

God save the King.

David Jenkins, *now Prisoner in the Tower.*

28. *Aprilis*, 1647.

The Vindication of Iudge Ienkins Prisoner in the Tower, the 29. of April 1647.

I Was convened upon Saturday the 10 of this moneth of April before a Committee of the House of Commons, wherein Master Corbet had the Chaire; and I was there to be examined upon some questions then to be propounded to me; to which questions I refused to give any other answer then that which was set down in a paper I then delivered to the said Mr. Corbet, which followeth in these words.

Gentlemen, I stand committed by the House of Commons for High Treason, for not acknowledging nor obeying the power of the Two Houses, by adhering to the King in this warre, I deny this to be Treason, for the supreame and only power by the Lawes of this Land is in the King: If I should submit to any examination derived from your power, which by the Negative Oath stands in opposition to the Kings power, I

should confesse the power to be in you, and so condemn my self, for a Traitour, which I neither ought nor will doe.

I am sworne to obey the King, and the Lawes of the land, you have not power to examine me by those lawes, but by the Kings writ, pattent or Commission: if you can produce either thereof, I will answer the questions you shall propound; otherwise I cannot answer thereto, without the breach of my Oath, and the violation of the lawes, which I will not do to save my life.

You your selves, all of you this Parliament, have sworn that the King is our only and supreame Governour, your Protestation, your Vow and Covenant, your Solemne League and Covenant, your Declarations, all of them witnesse to the Kingdome, that your scope is the maintenance of the Lawes; those lawes are and must be derived to us, and entitled by the onely supreame Governour, the Fountaine of justice, and the life of the law, the King. The Parliaments are called by his Writs, the Judges sit by his Patents,

tents, so of all other Officers, the Cities and Towns Corporate, governe by the Kings Charters; and therefore since by the Law I cannot be examined by you, without a power derived by his Majestie, I neither can, nor will, nor ought you to examine me upon any questions. But if as private Gentlemen, you shall be pleased to ask me any questions, I shall ratify and truelie answer every such question as you shall demand.

April 10. 1647. *David Jenkins*

This Paper hath been misrepresented to the good people of this Kingdom by a printed one, styling it my Recantation, which I own not, and besides is inselfrepugnant (just like these times, the Body falls out with the Head: To vindicate my self from that Recantation, and to publish to the world the Verity of the Paper then delivered to Mr. **Corbet**, and the matter therein contained, I have published this ensuing discourse.

No person who hath committed **Treason, Murder**, or **Felonie** hath any assurance at all for so much

as an houre of life, Lands or Goods, without the **Kings gratious pardon**, 27. **Hen.** 8. chap 24.

The King is not **virtually** in the two Houses at **Westminster**, whereby they may give any assurance at all to any person, in any **thing**, for any such offence.

1. **The House of Commons have declared** to the Kingdome in their Declaration of the 28. of **November** last, to the **Scots** Papers, p. 8. **That the King at this time is not in a condition to governe.** No person or thing can derive a vertue to other men, or things, which it self hath not; and therefore it is impossible that they should have a vertue from the King to govern, which they declare he hath not himself to give.

2. The Law of the Land is, **That no person in any Parliament hath a voice in the House of Commons, but that he stands a person to all intents and purposes as if he had never been elected or returned, if before he sit in the House, he take not his oath upon the holy Evangelists, that the Kings Ma:estie is the only and supreame Governour over all persons in all Causes.** All the Members of the said House have taken

5. *Eliab. chap.* 1.

taken it, and at all times as they are returned doe take it; otherwise they have no colour to intermeddle with the publick Affaires. How doth this Solemne and Legall Oath agree with their said Declaration, **That the King is in no condition to govern?** By the one it is sworne, he is the only supreme Governour; by the other, that he is not in a condition to governe.

3. The Oath is not, that the King was, or ought to be, or had beene, before he was seduced by il Councell, our only and supreame Goveruour in all Causes, over all persons; but in the present tense, **that he is our only and supreame Governour**, at this present in all Causes and over all persons. So they the same persons swear one thing, and declare to the Kingdome the contrary of the same thing, at the same time, in that which concerneth the weale of all this Nation.

4. The Ministers in the Pulpits doe not say, what they swear in the House of Commons. Who ever heard sithence this unnaturall Warre, any of their Presbyters attribute that to his Maiesty which they sweare? The reason is this, their oath is taken at **Westminster** amongst themselves: that

which

which their Ministers pray and preach, goes amongst the people. To tell the people that the King is now their only and supreme Governour in all Causes, is contrary to that the Houses do now practise, and to all they act and maintaine. They, the two Houses forsooth, are the only and supreame Governours in default of the King, for that he hath left his great Councell, and will not come to them, and yet the King desires to come, but they will not suffer him, but keep him prisoner at Holmby: so well doe their Actions and Oaths agree.

5. They swear now, King Charles is their only and supreame Governor; but with a resolution at the time of the Oath taking, and before and after, that he shall not be only or supreame Governour, or only and supreame, but not any Governour at all: For there is no point of Government, but for some yeares past they have taken to themselves, and used his name only, to abuse and deceive the people.

6. That this virtuall power is a meer fiction, their Propositions sent to Oxford, to Newcastle, to be signed by the King, doe prove it so. What needs this ado, if they have the virtuall power with them at Westminster?

7. To

7, To affirm that the Kings power (which is the vertue they talk of) is separable from his person is High Treason by the Law of the Land; which is so declared by that learned man of the Law, Sir Edward Cooke; so much magnified by this present Parliament, who in the 7. part of his Reports in Calvins case, fol. 11. saith thus In the reigne of Edward the second, The Spencers the Father and Sonne, to cover the Treason hatched in their hearts, invented this damnable and damned opinion, that homage and oath of Ligeance was more by reason of the Kings Crowne, (that is of his politique capacity) then by reason of the person of the King upon which opinion they inferred three execrable and detestable consequences. 1. If the King doe not demeane himselfe by reason in the right of his Crowne, his Lieges are bound by Oath to remove the King 2. seeing that the King could not be reformed by sute of Law, that ought to be done per asperte that is by force. 3. That his Lieges be bound to governe in aide of him, and in default of him, all which were condemned by two Parliaments, one in

in the raine of Edw 2. called *exilium Hugonis le Spencer*; and the other *in Anno*, 1. Ed. 3. chap. 2.

And that the natural body and politick makes one indivisible body, & that these two bodies incorporate in one person make one body and not divers, is resolved as the law of Eng. 1. Eliz. Plowdon Cō fol. 153. by Sir Robert Catlin L. Chiefe Iustice of Eng. Sir James Dier, L. Chiefe Iustice of the Common pleas, the L. Saunders, L. Chief Baron of the Exchequer, & by the rest of the Judges, viz. Iustice Rafall, Iustice Brown, Iustice Corbet, Iustice Weston, Baron Frevyl, Carus and Powtrel, Sergeant to the Queene, Garrard Atturney Generall; Carell Atturny of the Dutchy, Plowden the learnedst man of that age, in the knowledge of the Law, and Customes of the Realme.

8. The Law in all ages without any controversie is and hath been: that no Act of Parliament bindes the Subiects of this Land without the assent of the King, either for Person, Lands, Goods, or Fame. No man can shew any sillable, letter, or line to the contrary in the bookes of the Law, or printed Acts of Parliament, in any age in this Land: if the

9. Hen. 3, Magna Charta. So in every age til this day, and in every Kings time as appears by the acts in Print.

1. part of the Instit. Sect. 234, in fine where many of the Law books are cited 7. Hen. 7. 14. 12. of He. 7. 20.

the virtuall power be in the Houses, there needs no assent of the Kings. The stiles of the Acts printed from 9. Hen. 3. to 1. Hen. 7. were either **The King ordaines at his Parliament**, &c. or **the King ordaineth by the advice of his Prelates and Barons, and at the humble Petition of the Commons**, &c. In Hen. 7. his time the Stile altered, and hath sithence continued thus; **It is ordained by the Kings Majesty, and the Lords spiritualland temporall, and Commons in this present Parliament assembled**: So that alwayes the assent of the King giveth the life to all as the soule to the body; and therefore our Law-bookes call **the King, the Fountaine of Justice, and the life of the Law.**

2. Hen. 4, c. 22. 4 part inst. 42. Mr. Prin in his treatise of the great Seale Fol. 17. 27. Hen. 8. C. 24.

9. Mercy as well as Justice belongs by the Law of the Land onely to the King. This is confessed by Mr. Pryn, and it is so without any question: The King can onely pardon, and never more cause to have sufficient pardons then in such troublesome times as these, and God send us pardons and peace; None can give any pardon, but the King by the Law of the Land: **The whole and sole power of pardoning Treason**

and Felonies belongs to the King, are the words of the Law, and it is a deluſion to take it from any other, and utterly invalid. 27. *Hen.* 8. cap. 24.

10 Queene *Elizabeth* ſummoned her firſt Parliament, to be held the 23. of Jan. in the firſt year of her Majeſties Raigne; The Lords and Commons aſſembled by force of the ſame Writ, the 21 day the Queen fell ſick, and could not appeare in her perſon in Parliament that day, and therefore prorogued it untill the 25 of the ſame moneth of January: *Reſolved by all the Judges of* England, *that the Parliament began not the day of the return of the Writ*, viz. *the* 23. *of January, when the Lords and Commons appeared, but the* 25. *of the ſaid moneth when the Queen came came in perſon*; which ſheweth evidently that this virtuall preſence is a meere deluding fiction that hath no ground in Law, reaſon, or ſence. They have the King now a priſoner at *Hohnby*, with guards upon him, and yet they govern by the virtuall power of their Priſoner. Theſe are ſome few of the cauſes and reaſons which moved me to deliver that Paper to Mr. *Corbet*, which I am ready to juſtifie with my life, and ſhould hold it a great ho-

3. *of Eliz.* *Dier.* 293.

nour to dye for the honourable, and holy Laws of the Land: that which will save this Land from destruction, is, **an Act of Oblivion and His Majesties gracious general pardon, the souldiers their arrears, and every man his own, and truth and Peace established in the Land, and a favorable regard had to the satisfaction of tender consciences.**

April 29. 1647.

David Jenkins.

THE ARMIES INDEMNITY, With Addition.

Together,

With a Declaration ſhewing how every Subject of *England* ought to be tryed for Treaſons, Felonies, and all other Capitall Crimes, as it is ſet down in the Lawes of the LAND.

By *David Jenkins*, now Priſoner in the Tower of LONDON.

Printed in the Yeer 1648.

The Armies Indemnity, &c.

UPon the publishing of the Ordinance of the 22 of May last, for the Indemnity of the Army, certain Gentlemen well affected ro the peace of the Kingdom, and safety of the Army, desired me to set down in writing, whether by the Law of the Land, the said Ordinance did secure them from danger as to the matters therein mentioned: For whose satisfaction in a business wherein the lives and fortunes of so many men were concerned, and the peace of the kingdome involved, I conceived I was bound in duty and conscience faithfully and truly to set down what the Law of the Land therein is, which accordingly I have with all sincerity expressed in this following discourse.

The danger of the Army by the Law of the Land is apparent to all men: It is high Treason by the Law of the Land to leavie war against the King, to compasse or imagine his death, or the death of his Queen, or of his eldest Sonne, to counterfeit his

25. Ed. 4. c. 22.
2 R. 2. c. 3.
2 H. 4. c. 10.
1 & 2 Phil. & Mar. c. 10

his Money or his great Seale; They are the very words of the Law: Other Treasons then are specified in that Act are declared to be no Treasons untill th. King and his Parliament shall declare otherwise, they are the very words of the Law; King and Commons, King and Lords, Commons and Lords cannot declare any other thing to be treason then there is declared; as appears by the Lord *Cook*, in the places cited in the Margin; A Law book published by order of the House of Commons this Parliament, as appears in the last leaf of the 2 part of the Institutes published likewise by their Order.

3 Pars Instit. pag. 22. & 2. pars instit. pag. 47. 48. and 4. pars instit. p. 23. 48. 39. 3. pars instit. cap. Treason, *p* 9. 10. *and* 12.

The Resolutions of all the Judges of England, upon the said Statute of the 25. *Ed.* 3. (as appears in the said third part of the Institutes, *Chap.* High-Treason) have beene, that to imprison the King untill he agree to certain demands is High-Treason; to seise his Ports, Forts, Magazine for War, are High-Treason; to alter the Laws is High Treason.

Mr S. Iohn the Sollicitour in his speech upon the arraignment of the Earl of *Straf. ford.* Printed by order of the House of Commons. *pag.* 7 13. 3

The word King in the Statute of 25. *Ed.* 3. *cap.* 2. must be understood of the Kings naturall person; for that person can onely dye, have a Wife, have Son, or be imprisoned.

4 Pars Instit. c. Parl. p. 25.

The Priviledge of Parliament protects no man from Treason or felony, howbeit he be a Member; much lesse can they protect others: those who cannot protect themselves, have no colour to make Ordinances to protect others who are no Members.

11. H. 7 c. 1.

The Statute of 11. *Hen 7. cap.* 1. doth by expresse words free all persons who adhere to the King.

Stamford. l. 2. fol. 99. 38 Ed. 3. Statutes at large 144 20. Ed 3. c. 1. 11 Ri. 2. c. 10 4 pars instit. Pag. 23 48. 29.

The Army by an Act of Indemnity free themselves from all those dangers, which an Ordinance can no more do then repeal all the Lawes of the Land, the whole and sole power by Law to pardon all Treasons, felonies, &c. being solely and wholly in the King, as is cleared by the Statute of 27 *H.* 8. c. 24. and the Law of the Land in all times.

Having shewed the danger of the Army by the Law of the Land, next consider the Ordinance of the Lords and Commons published the 22. of May last for their indemnity; by the ensuing discourse it doth appear they have no indemnity at all thereby.

The Indemnity proposed by the Ordinance is for any Act done by the authority of the Parl. or for the service or benefit thereof; and that the

Judges,

Judges and all other ministers of Justice shall allow thereof.

This Ordinance cannot secure the Army for these reasons.

1. Their Judges are sworn to do Justice according to the Law of the Land, and therefore the Judges must be forsworn men if they obey it; because an Ordinance of both Houses is no Law of the Land, and no man can believe they will perjure themselves so palpably and visibly in the eye of the world.

3. Pars Inst. Pag. 22. 2 pars instit. 47. 48. 1 pars instit. 193. Princes Case 8. reports.

All trialls for treasons, felonies, robberies, and such like capital offences, are by the Law of the Land to be by indictment of a Jury appointed out of the Neighbourhood where the offence was done. There is no common Jury man but understands what the Law is in these cases as wel as the best Lawyers, and the Law makes the Jury Judges of the fact, whereby the Souldier is left to their mercy whom he hath offended (as some of them have lately had wofull experience, and thereupon do rightly apprehend their danger) Now no man can think that the Jurors wil perjure themselves to acquit the soldiers for robbing and plundring of the Countries and thereby utterly destroy their owne Rights

Mag. Char. 2 cap. 29. 37 Ed. 3. c. 4. 28. E. 3. c. 3. 27. Ed. 3. c. 8. 42. E. 3. c. 3.

Declaration of the Army presented at Walden, and printed by the appointment of the Officers subscribed.

Rights and Properties.

3 If the Judges conceive (as they may) that the taking of other mens horses or goods is not by the authority of Parliament, or for the service and benefit thereof, the Souldier dyes for it; they may say to steale or rob any man of his goods is not for the Parliaments service but against it, which was alwayes the sense of the people, and doubtlesse the Jurors will not think otherwise.

4 pars instit. pag. 1.
3 pars instit. pag. 22.
1 pars instit. pag. 1.
28. H. 8. f. 11
Dier 38 H. 8. fol. 60.
12 H. 7. 20.
1 pars instit. 159
Primes case 8. Reports.

4. This Ordinance is restrained to the authourity service or benefit of the Parl. The Lords and Commons make no more a Parliament by the Law of the Land, then a body without a head makes a man; for a Parliament is a body composed of a King their head; The Lords and Commons the Members. All three together make one body, and that is the Parl. and no other; and the Judges may, ought, and I believe, wil according to their oaths proceed, as not bound at all by this Ordinance. For it is restrained to the authority of Parl. service or benefit thereof, whereas the two Houses are not the Parl. but onely parts thereof, and by the abuse and misunderstanding of this word *Parliament* they have miserably deceived the peeole.

5. This

5 This Ordinance is against their Ordinance which expresly prohibits plundering, and so there is one Ordinance against another, whereby their Judges have an out-let to proceed on the one or the other, and thereby the Army hath no manner of security.

28 *August*, 1642 Coll. of Ord. first part, 565. 592. 605 several Ordinances.

6 The word *Parliament* is a French word (howbeit, such Assemblies were before the Norman Conquest here,) and signifies in that language to consult and treat; that is the sense of the word *Parler* in the French Tongue. The Writ whereby the two Houses are assembled, which is called the writ of Summons of Parliament, at all times, and at this Parliament used, and which is the warrant, ground, and foundation of their meeting, is for the Lords of the House of Peers, the Judges and Kings Councell to consult and treat with the King (that is the *Parler*) of great concernments, touching *first* the King, *secondly* the defence of his kingdom, *thirdly* the defence of the Church of *England*. It cannot be a Parliament that will not parle with their King, but keep him in prison, and not suffer him to come to them & parle, and therefore the law, and sense, and reason informing every man, that is no manner of Parliament

2 *pars Instit.* 109, 210. 4 *pars p.* 49.

ment (the king with whom they should parle, being so restrained, that they wil not parle with him); the Army hath no manner of security by this Ordinance; for their indempnification referrs to that which is not in being untill the king be at liberty.

The cõmon souldiers second Apol.

7 It is more then probable that their Judges before the last Circuit had Instructions to the effect of this Ordinance, but they the Judges making conscience of their Oath, laid aside the said instructions, and ought, and may, and it is beleeved will no more regard this Ordinance, then the said Instructions: What was done in the last Circuit the Army wel knows, touching many of their fellow-souldiers.

Six Grievances of the' Army, published 15 *May* last.

Three Grievances of Col. *Rich's* Regiment.

8 The Houses in their first Proposition to his Majesty for a safe and well grounded Peace, sent to Newcastle to desire a pardon from his Majesty for themselves: they who desire a pardon, cannot grant a pardon (common reason dictates this to every man) and therefore that the Army should accept an Indempnity from them who seek it for themselves, or should conceive it of any manner of force, is a fancy: so that no man in the whole Army but may apprehend, that it is vain, and a meer delusion.

9 His Majesty by his gracious Message of the 12 of May last, hath offered an Act of Oblivion, and a generall pardon to all his people;

people; this done, the Law doth indemnifie the Army (without all manner of scruple) for any thing that hath been done; for it is an Act of Parliament, when he King and two Houses concurre, and bindes all men. There is no safety by the Ordinance; there is safety by an Act of Parliament: And wil not reasonable men prefer that which is safe before that which is unsafe?

10 His Majesty by his said Letter agrees to pay the Arrears of the Army; I am sure that it is a Publick Debt, and the chiefest and the first that by the two Houses should be paid, and before any Dividend or gratuities bestowed among themselves; for their blood, limbs and lives have put and kept both the Houses at rest in the power they have: So by this concurrence of his Majesty for your indemnity, and for your arrears the Army have not an Ordinance, or the Publick Faith, but the Law of the Land to make sure unto them their Indemnity for all Acts, and for their Arrears, and therewith also bring peace to the Land.

11 The Kingdom and people generally desire these things. To such an Army just and reasonable things must not be denyed; the things formerly proposed are most just and reasonable, you may have them if you will; if you will not, you render this Kingdom miserable, wherein you will have your shares of miseries: The head and the body are such an incorporation as cannot be dissolved without the destruction of both.

Mr *Pyms* Speech against the Earl of *Strafford*, p. 16. *Six considerations printed by the command of the House of Commons.*

The Additionall Ordinance of both Houses passed the fifth of *June* instant for the fuller indemnity of the Army, makes nothing at all to the matter: For that extends not to Felony, Homicide, Burglary, Robbery, or any other capital crime, which is the

main

main business insisted upon, and most concerneth the Souldiers security.

12 The both Houses in the said additionall Ordinance say, that it is expedient that all offences be pardoned & put in oblivion: pardon & oblivion cannot be understood to be for a time, but for ever; and they themselves confess, that an Ordinance is not binding but *pro tempore*, which with the most advantagious interpretation can be but a reprieve or delay of the execution of the Law; and therefore that cannot pardon or put in oblivion by their own shewing.

But the Law of the Land is, (and so it hath constantly been practised in all times) that no persons, of what estate soever, have any power to pardon Treason, Felony, or any other offences, but the King onely, who hath the sole and whole power to pardon all such crimes whatsoever. And in the same manner an Ordinance is of no Authority at all to take away the right of private mens actions, by any evidence it can give: in truth all the evidence that this Ordinance will give, is, that it records to posterity nothing but a lawlesse and distempered time.

27.H.8.c.24

For remedy thereof I say again, It is a certain truth, this Kingdom without an Act of Oblivion, and a general pardon, and the payment of Souldiers Arrears, and a meet regard had to tender consciences, will unavoidably be ruined.

June 10, 1647.

DAVID JENKINS,
Prisoner in the Tower
of LONDON.

Sundry

Sundry Acts of Parliament mentioned and cited in the Armies Indempnities: set forth in words at large, for the better satisfaction of such as desire to be rightly informed.

25 Edw. Chap. 2.

A Declaration what offences shal be adiudged Treason.

WHereas divers opinions have been before this time in what case Treason shall be said, and in what not: The King at the request of the Lords and of the Commons, hath made a Declaration in the manner as hereafter followeth: That is to say, When a man doth compasse or imagine the death of our

Lord the King, or of our Lady the Queen, or of the eldest Son and Heir: or do violate the Kings companion, or the Kings eldest Daughter unmarried, or the Wife of the Kings eldest Son and Heir; or if a man do levie War against the Lord our King in his Realm, or be adherent to the Kings Enemies in his Realm, giving to them aid and comfort in the Realm, or else where, and thereof he probably attainted of open deed by people of their condition: And if a man counterfeit the Kings great or privie Seal, or his Money: and if any man bring false money into this Realm, counterfeit to the money of England, and the money called Lusburgh, or other like to the said money of England, &c.

11. Hen. 7. Chap. 1.

None that shall attend upon the King, and do him true service, shall be attainted, or forfeit any thing.

THe King our Soveraign Lord calling to remembrance the duty of Allegiance of his Subjects of this his Realm, & that they by reason of the same are bound to serve their Prince and Soveraigne Lord for the time being in his Wars, for the defence of him & the Land against every rebellion, power & might raised and reared against him, and with him to enter & abide in service in battel, if case so require, and that for the same service what fortune ever fall by chance in the same battell against the minde and will of the Prince (as in this Land sometime passed hath been seen) that is

not reasonable, but against all laws, reason & good conscience, that the said Subjects going with their Soveraign Lord in Wars, attending upon him in his person, or being in other places by his commandment within this Land or without any thing should lose or forfeit for doing their duty or service of Allegiance. It be therefore ordained, enacted and established by the King our Soveraign, by the advice and assent of his Lords Spiritual and Temporall, and the Commons in this present Parliament assembled and by authority of the same, that from henceforth no manner of person or persons whatsoever he or they be, that attend upon the King and Soveraign Lord of this Land for the time being, in his person, and do him true and faithfull service of Allegiance in the same,

same, or be in other places by his commandment in his wars within this land; or without, that for the said deed and true duty of Allegiance, he or they be in no wise convict or attaint of high treason, nor of other offences for that cause, by Act of Parliament, or otherwise by any Processe of law whereby he or any of them shall lose or forfeit life, lands, tenements, rents, possessions, hereditaments, goods, chattels, or any other things; but to be for that deed and service utterly discharged of any vexation, trouble, or losse. And if any Act or Acts, or other Processe of the Law hereafter thereupon for the same happen to be made contrary to this Ordinance, that then that Act or Acts, or other Processe of Law whatsoever they shall be, stand and be utterly void. Provided al-

wayes, that no person or persons shall take any benefit or advantage by this Act, which shall hereafter decline from his or their said Allegiance.

Cap. 22. in the Statute of 27. H. 8. It is enacted, that no person or persons, of what estate or degree soever they be of, shall have any power or authority to pardon or remit any treason, murders, manslaughters, or any kinde of felonies, &c but that the King shall have the sole and whole power and authority thereof united and knit to the Imperiall Crown, as of right it appertaineth, &c. And in the same Statute it is enacted further, That none shall have power, of what estate, degree, or condition soever they be, to make Justices of Eyre, Justices of Assize, Justices of Peace, &c. but all such Officers and Ministers shall be made

made by Letters Patents under the Kings great Seal, in the name, and by the authority of the King, and his Heirs and Successours, Kings of this Realm.

In the first yeer of Queen Mary, and the first Chapter, It is enacted by the Queen, with the consent of the Lords & Commons, That no deed or offence by Act of Parliament made treason, shall be taken, deemed, or adjudged to be high Treason, but onely such as be declared and expressed to be Treason by the Act of Parliament made 25. Ed. cap. 2. before mentioned.

A Declaration of M. David Jenkins, *now Prisoner in the Tower of* London, *one of His Majesties Judges in* Wales, *for tryals of Treasons, Murthers, Felonies, and all other capitall crimes, that they ought onely to be by Juries, and not otherwise, unlesse it be by act of Parliament.*

THe Common Law of this Land is, That every freeman is subject to a tryall by Bill of Attainder in Parliament, wherein His Majesty and both Houses must necessarily concurre, for that tryall and attainder is an *Act of Parliament*, to which all men are subject.

a No man shall otherwise be destroyed, &c. but by the lawful judgement of his Peers, or by the common law of the land. Peers to Noblemen are Noblemen, Peers to the Commons are Knights, Gent. &c. Judgement

a Magna Chart. 29. 2 part Inst. fol. 28, 29, 46, 48, 49, 50 composed by Sir Ed. Cook, and

ment of Peers refers to Peers, those words, *The Law of the Land*, refers to the Commons; the law of the Land is for the tryall of the life of a free Commoner, by Indictment, Presentment of good and lawfull men where the deed is done, or by Writ originall of the common Law: all this is declared in *Mag. Charta c.* 29. and by 25 *Ed.*3.*c.*4. 28 *Ed.*3. *c.*3. 37 *Ed.* 3. *c.*8. 42 *Ed.c.*3. If the Lords will try any man by an Ordinance, they destroy that excellent Act of *Mag.Charta*, and all those other good Laws.

published by the Order of the House of Gommons in *May*, 1641. 4 parts Instit. fol. 41. 356.

Sir *Simon de Bereford*, a free Commoner of England was condemned by the Lords to death by an Ordinance; which after the Lords better considering the matter, that they might be acquitted of that sentence, became suters to the King, that what they had so done in future time might not be drawn into president, because that which they had so done, was against the Law: *b* with this agrees the practice and usage of all times in this Land, all the free Commoners of this Kingdom have alwayes been tryed, and acquitted or condemned in capitall causes by Jurors of their equals.

b Rot. Par. 8 roul. 4. E. 2. Num. 2. par. Inst. pag. 50. with this agrees Sir *Io. Lees* Case, Rot Par. 41. *E.* 3. Num. 22, 23. 2 instit. fol. 5.

An Ordinance bindeth not in Law at

at all, *c* and but *pro tempore*, as the two Houses now affirm, a mans life cannot be tryed by that which is not binding, and to continue for all times, for a life lost cannot be restored.

c See 4 part inst. fol 23. 48. 231 298. 292. 2 part. inst fol 47. 48. 257. 644. 4 H. 7 f. 18. 21 H 7. f. 14. 3 part Inst. fol. 41.

By an Act of Parliament of the 1 and 2 of *Philip* and *Mary* ch. 10. It is enacted that all tryals for Treason hereafter to be had, shall be according to the course of the common Law, and not otherwise.

If the crime charged upon any be Treason against the two Houses (against the Parliament it cannot be; for there is no Parliament without the King) *that is no Treason in Law*, as appears by 25. *Ed.* 3. *chap.* 2. 11. R. 2. *chap.* 3. 1 *Hen* 4 *ch.* 10. 1 and 2 *Philip and Mary chap.* 10. 3 *part of the Institutes pag* 23.

An Act of Parliament to make any a Judge where he is party, is a void act; *d* for none can be a Judge and party in the same cause; and therefore the House of Peers being a party touching the crime charged upon any man whom they would try by an Ordinance for Treason against both Houses, cannot be a Judge.

d Dr. Bonham's Case. 8. part. of Cooke's Reports.

By the Petition of Right, *e* if any man deserve death, he ought to suffer the

e Petition of Right. 3 *Car. Regis.*

the same according to the Lawes of the Land established, and not otherwise: but an Ordinance of the Lords is no established law.

The Protestation, the Vow & Covenant, the solemn League and Covenant, the declarations of both Houses, had, made and published sithence this unnaturall War, are amongst other things sworn and set down to be for the maintenance of the Lawes; the people of this land ought to enjoy the benefit of their Birth-right the Law of the Land, and the making good of the said Protestation, Vow and Covenant, League and Covenant, and Declarations, otherwise truth must be said, and will be said, that there is brought in a new arbitrary and tyrannicall Government.

3 part Inst. fol 89.

If the Lords have taken one mans life by an Ordinance, they are not bound to take any more; and the case differs in case any appeale be made from a tryal by Ordinance to a tryal at common Law, which was not done by that man whose life was taken away by an Ordinance.

The Lords ought to remember, that his Majesty and his Progenitors have made them a house of Peers, they are trusted to counsell him in peace,

f and

f Nevels case 8 part Cooks Reports.

f and defend him in war, his Majesty in Parliament is to consult and treat with the Peers, and with his Councell at Law, Judges, his Sergeants, Atturney, and Solicitor, and Masters of the Chancery; the Lords & that Councel by the respective Writs of Summons to Parliament, are to give counsell, g the House of Commons by their Writ to perform and consent.

g 4 Pars instit. fol. 4. 9. 27 Ed. 3. c. 1, 15. 3 part Instit. f. 135.

In the house of Lords the Court of Parliament onely is, for they onely examine upon oath, h with them the King in person sits, and by them there erroneous judgements * (upon a Petition to his Majesty for obtaining of a Writ of Error) by the advice of the Judges, are reversed, or affirmed, &c. The Lords are to remember that their eminency and grandeur is preserved by the Laws, if they leave all to will, and dishonour their King, and make nothing of the Laws, they will make nothing of themselves in the end.

h 1 H. 7. f. 20

* 14. E. 3. c. 5

And therefore it is well worth your observation what was said by M. *John Pym* a member of the House of Commons in his Speech against the Earle of *Strafford*, in the beginning of the Parliament, which Speech is published by the express order of the House

House of Commons, the words are these. *The Law is that which puts a difference betwixt good and evill, betwixt iust and uniust, if you take away the Law all things will fall into a confusion, every man will become a Law unto himselfe, which in the depraved condition of humane nature must needs produce many great enormities: Lust will become a Law, and envy will become a Law, covetousnesse and Ambition will become Laws, and what dictates, what decisions such Laws will produce, may easily be discerned,* i. *&c.* They that love this Common-wealth as things now stand, will use all means to procure and Act of Oblivion, a generall pardon from his Majesty, the Souldiers their Arrears, and tender consciences a just and reasonable satisfaction, else we all must perish, first or last.

1 See 1 part. book decl. pag. 140. 163.

Mai. 17. 1647.

God preserve His Maiesty, and the Lawes wherein their Lordships and the whole Kingdome are concerned.

David Ienkins prisoner in the Tower of *London.*

C

A

THE CORDIALL

OF

Judge JENKINS For the good People of LONDON.

In Reply to a Thing, called,

An Anſwer to the poyſonous ſeditious Paper of Maſter *David Jenkins*; By *H. P.* Bariſter of Lincolns Inne.

Printed in the Year, 1647.

The Cordiall of Judge *Jenkins*, for the good People of LONDON.

AFter the said Mr. *H.P.* hath made a recital of the Heads of my *Vindication*, he deduced his Answer unto these eight particulars, which follow *verbatim*.

1

It cannot be denyed, but the Parliament *sits by the* Kings *writ, nay, if Statute Law bee greater then the* Kings *writ, it cannot be denyed but the* Parliament *sits, or ought to sit by something greater then the* Kings *Writ: And if it be confessed that the* Parl. *sits by the* Kings *writ but does not act by the* Kings *writ, then it must follow, that the* Parlia. *is a void vain Court, and sits to no purpose; nay, it must also follow, that the* Parliament *is of lesse authority, and of lesse use then any other inferiour Court; forasmuch as it is not in the* Kings *power to*

controule other Courts, or to prevent them from sitting or acting.

2.

This is a grosse non sequitur, the Kings power is in himselfe; Ergo, it is not derived to, nor does reside vertually in the Parliament. For the light of the Sunne remains imbodied, & exunhausted in the Globe of the Sun, at the same time as it is diffused and displayed through all the body of the ayre; and who sees not that the King, without emptying himself, gives Commissions daily of Oyre and Terminer to others, which yet himselfe can neither frustrate nor elude? but for my part I conceive it is a great errour to infer that the Parliament hath onely the Kings power, because it hath the Kings power in it: for it seemes to me, that the Parliament does both sit and act by concurrent power, devolved both from the King and Kingdome; and in this some things are more obvious and apparent then in others. For by what power does the Parliament grant Subsidies to the King? if only by the power which the King gives, then the King may take Subsides without any grant from the Parliament: and if it bee so by a power, which the people give to the Parliament; then is will follow, the

Parlia-

Parliament hath a power given both by King and Kingdome.

3.

The sending Propositions to the King, and desiring his concurrence, is scarce worth an Answer; for Subiects may humbly petition for that which is their strict right and propertiy. Nay, it may sometimes beseem a superiour to prefer suite and inferiour for matters in themselves due. God himselfe hath not utterly disdained to beseech his own miserable, impious, unworthy creatures; besides, 'tis not our Tenet, that the King hath no power, because he hath not all power; nor that the King cannot at all promote our happinesse, because he hath no iust claime to procure our ruine.

4.

we affirm not, that the Kings power is separated from his Person; so as the two Spencers *affirmed, neither doe we frame conclusions out of that separation; as the two* Spencers *did, either that the King may be removed for misdemeanours, or performed* per asperte; *or that the Subiect is bound to goeern in aid of him; we only say, that his power is distinguishable from his*

person, and when he himselfe makes a distinction betwixt them, commanding one thing *by his Legall Writs, Courts and Offices, and commanding* another thing *extraiudiciaty by word of mouth, Letters, or Ministers, we are to obey his power rather then his person.*

5.

We take not from the King all power of pardoning Delinquents, we only say it is not proper to him quarto modo: *For if the King pardon him which hath murthered my son, his pardon shall not cut me off from my appeale; and 'tis more unreasonable, that the* Kings *pardon should make a whole State which hath suffered remediless then any private man. So if the King should deny indemnity to those which in the fury of war have done things uniustifiable by the Lawes of Peace, and thereby keep the wounds of the state from being bound up; 'tis equitable that an act of Indemnity should be made forcibly another way. And if his will not hold, yet this is no good consequence, the* King *is absolute in point of pardons, therefore he is absolute in all things else; and the Parliament hath no power to discharge Delin-*

linquencies, therefore it hath no power in other matters.

6.

The Parliament hath declared the King *to be in no condition to Govern: but this must not be interpreted rigidly, and without distinction; for if the* King *with his sword drawn in his hand, and pursuing the Parliament and their adherents as Rebels, be not fit for all Acts of Government, yet 'tis not hereby insinuated that he is divested of the habit or right of Governing: If he be unqualified now, he is not unqualified for the futer; if he may not do things destructive to the Parliament, he is not barred from returning to the Parliament, or doing iustice to the Parliament. This is a frivolous cavill, and* subterfuge.

4.

Wee sweare, that the King *is our supreame Governour over all persons, and in all causes; but wee doe not sweare he is above all Law, nor above the safety of his people, which is the end of the Law, and indeed* Paramount *to the Law it selfe. If he be above Law, or lyable to no restraint of our* Law, *then we are no freer then the*

French or the Turks; *and if he be above the prime end of Law,* common safety, *then vve are not free as the* French *or* Turks: *For if the totall subversion of the* French *or* Turk *vvere attempted, they might by Gods Lavv, imprinted in the Book of Nature, justifie a selfe-defence; but vve must remedilesly perish, vvhen the King pleases to command our throats. Besides, hovv atchieved the King of* England *such a Supremacy above all Lavv and the community it selfe, for vvhose behoose Lavv vvas made? If Gods donation be pleaded, vvhich is not speciall to him, or different from vvhat other Kings may pretend to, then to vvhat purpose serve our Lawes, nay, to vvhat purpose serve the Lawes of other Countries? for by this generall donation, all Nations are condemned to all servitude as well as vve. If the Law of this Land be appealed to, vvhat books hath Mr.* Jenkins *read, vvhere hath he found out that* Lex Regia, *vvhereby the people of* England *have given avvay from themselves all right in themselves? Some of our Books tell us, that vve are more free then the* French; *that the King cannot oppresse us in our persons or estates, by imprisonment, denying iustice: or laying Taxes vvithout*

our

our consents: other Books tell us, that the safety of the people, is the supreme Law, and that the King hath both God and the Law for his Superiour. But all this is nothing to learned Mr. Jenkins.

8.

We admit, that no Acts of Parliament are compleat, or formally binding, without the Kings assent: yet this is still to be denyed, that therefore without this assent particularly expreſt, the two Houses can doe nothing, nor have any virtuall power at all, no, not to examine Mr. Jenkins, *nor to doe any other thing of like nature, though in order to publick iustice and safety. I have done, and wish M.* Jenkins *would call in and lick up againe his black infamous execrable reproaches, so filthily vomited out against the Parliament.*

To the first.

I Was examined by a Committee appointed by the House of Commons: I say, and said, that the House of Commons have no power to examine me, for that it is no Court; every Court hath power to

examine upon Oath; this power the House of Commons never claimed; The Court of *Pie-powders*, *Court Baron*, *Hundred Court*, *County Court*, and every other Court of Record, or not of Record, hath power to examine upon Oath; and an examination without Oath is a communication onely; examination in Law is upon Oath.

5 H.4.c.3.
3 H.6.46.
19 H.6.43.
35 H.6.5,

There is no Court without a power of tryall; the House of Commons hath no power to try any office, nor ever practiled it by Bill, Indictment, Information Plaint, or Originall, Writt, to reduce it to tryall, nor to try it by Verdict, Demurrer or Examination of Witnesses upon Oath, without which there can be no condemnation or judgement; and that which can attain to no reasonable end, the Law rejects as a thing *inutile* and uselesse; *Sanens incipita fine*.

Sir *Anthony Maynes case*. Cook: part. Reports, Lit.2.lib. Sect.194.6. H.4.1.

The Writ whereby they are called gives them power, *Ad faciendum & consentiendum*; to what? to such things *Quæ ibidem de communi Consilio ordinari contigerint*, (*viz.*) in the Parliament: This makes nothing at all for a Court for the House of Commons; that *consilium* which that Writ intends, is cleared partly by the

4 pars. instit. fol.4.& 9.

Writ

Writ for chusing Knights, &c. For the King by that Writ is said to resolve to consult and treat with the Prelates and Peers of the Kingdom, for and touching the great concernments of the Common-wealth (for the King never sits in the House of Commons;) and this also is made evident by the Writs to the Prelates, Peers, Judges, and to his Councell at Law; the words in their Writ are; *To appear and attend the Parliament, consilium impensuri*, the one doth *consulere*, the other *facere & consentire*.

The House of Lords, where the King sits in person, assisted by his Lords, Judges, Serjeants, Atturney, Sollicitor, Masters of the Chancery, is a Court of Record to many purposes; set down in the Bookes of Law, and the Statutes of the Land; and that Court is onely in the House of Lords, where the King sits.

7 H.6.28.
1 H.7.20.
13 E.3.ca.5.
4. pars, instit.pag.21.

A Court must either be by the Kings Patent, Statute Law, or by the Common Law, which is common and constant usage; the House of Commons hath no Patent to be a Court, nor Statute Law to be a Court, nor common usage; they have no Journall Book, but since E. 6. time: was there ever Fine by the House of Com-

Plowd. Com.319.

Commons estreated into the Exchequer? For murder or Felony they can imprison no man, much lesse for Treason; that House which cannot do the lesse, cannot do the greater.

25 E.3.c 4. 3 Car. Petition of Right.

It is ordained that no man shall be imprisoned or put out of his Franchise by the King or his Councell, but upon Indictment or Presentment of his good and lawfull Neighbours, where the deed is done, or by originall Writ at the Common Law, and so is *Lex terræ* the Law of the Land mentioned in *Magna Charta, cap.* 29. expounded, and the said *Magna Charta*, and *Charta de Foresta* are declared by the Statute of 25. *E.* 1. c. 1 to bee the Common Law of the Land. All Judges and Commissioners are to proceed *Secundum legem & consuetudinem Regni Angliæ*, as appeares by all proceedings in all Courts, and by all Commissions; and therefore the House of Commons by themselves, proceeding not by Indictment, Presenement, or Originall Writ, have no power to imprison men or put them out of their Franchise.

4. pars, Instit. pag. 1. 3 pars Instit. p. 23.

This no way trenches upon the Parliament; for it is in Law no Parliament without King and both Houses; I haue onely in my Paper de-

delivered to M. *Corbet*, applyed my selfe to that Committee, that had no power to examine me, but I never thought, said, or wrote, that the Parliament had no power to examine me: the Law and custome of this Land is that a Parliament hath power over my life, liberty, land, and goods, and over every other subject, but the House of Commons of it selfe hath no such power.

12 H.7.20. Princes Case. 8 Pars Cook. 1 Pars, Instit. p. 159. 14 H.8.3. Dyer. 38. H.8.60.

For the Lord *Cooks* relation, that the House of Commons have imposed Fines, and imprisoned men in Queene *Elizabeths* time, and since; Few Facts of late time never questioned, make no power, power nor Court; *à facto ad ius* is no good argument; for the words of the Statute of *6 H.8 c 16.* that a licence to depart from the House of Commons for any Member thereof, is to be entred of Record in the Book of the Clerk of the Parliament, appointed, or to be appointed for that House, doth not conclude that the House of Commons is a Court of Record.

1 Pars Instit. 19.b. 4 Pars Instit. 1. Parl. Hobbarts Reports, fol. 152.

For first, that Law of *6 H.8, c.26.* handles no such question, as that, whether the House of Commons be a Court; it is a maxime in all Laws, *Lex aliud tractans nil probet*, the word

Hobbarts Reports, fol 154.

(Re-

(*Record*) there mentioned, is onely a memoriall of what was done and entred in a Book: A Plaint removed out of the County-Court to the Court of the Common Pleas, hath these words in the Writ of remove, *Recordari facias loquelam, &c.* and yet the County Court is no Court of Record; and so for ancient Demesne in a Writ of false judgement, the words are *Recordari facias loquelam, &c.* and yet the Court of ancient Demesne is no Court of Record; and so of a Court Baron, the Law and custome of *England* must be preserved, or *England* will be destroyed, and have neither Law nor custome.

Fitz. Nat. Br. 70.
Fitz. Nat. Br. 13.
12 H. 4. 33.
34 H. 6. 49.

Let any man shew me, that the Court of Lords, or the House of Commons in any age hath made any man a delinquent (*Rege dissentiente*) the King contradicting it under his Great Seale. *Michel*, and others of late were condemned by the prosecution of the House of Commons in K. *Iames* his time; did King *Iames* ever contradict it? and so of ancient times, where the House of Peeres condemned the Lord *Latimer* in 50. *E.* 3. The Kings pardon freed him: which shews cleerly, that the King expresse or implyed assent must of necessi-

4 Part. Instit. Tit. Parliam. pag. 23.

cessity be had to make a Delinquent. The execution of the sentence is in the Kings name.

The Gentleman saith, *That the Parliament sits, or ought to sit by something greater then the Kings Writ, &c.*

No Parliament did ever sit without the Kings Writ, nor could ever Parliament begin without the Kings presence in person, or by a Guardian of *England* by patent under the Kings Great Seale, the King being *in remotis*, or by Commission under the Great Seale to certain Lords representing the Kings person, and it hath been thus in all ages unto this Session of Parliament, wherein his Majesty hath been pressed, and hath passed two Acts of Parliament, one for a Triennall Parliament, and another for a perpetuall, if the Houses please, to satisfie their desires; how these two Acts agree one with another, and with the Statute in *Ed.* the thirds time, where Parliaments are ordained to be holden every yeare, and what mischiefes to the people of this Land such length of Parliaments will produce by protections & priviledges to free them and their meniall servants from all debts during their lives, if they please to continue it so long, and how

4 Pars, Inst. p.4, & 6.

4 E.3.c.14. 36 E.3.c.10. 21 Jac. the Act of limitation of Actions, c.22.

how destructive to mens actions against them, by reason of the Statute of Limitations, which confines their actions to certaine yeares, and many other inconveniences of greater importance, is easie to understand.

How can any man affirme, that the two Houses of Parliament doe act now by the Kings Writ, which relates to Councell and Treaty with the King, concerning the King, the defence of his Kingdome and of the Church of *England*, these are three points which it tends to, as appeares by the Writ. They keepe their King prisoner at *Holmby*, and will not suffer him to consult and treat with them. They have made a Vow & a covenant to assist the forces raised & continued by both houses against the forces raised by the King without their consent and to the same effect have devised the Oath which they call the *Negative Oath*: Is this to defend the King's Kingdom, or their kingdom?

When by their Solemne League and Covenant they extirpate Bishops, Deans and Chapters root & branch, is this to defend the Church of *England*? (that Church must necessarily be meant, that was the Church of *England* when the said Writ bore test) they

4 pars. Instit. p. 14.

Vow and Covenant. p. 11.

3 pars, Cook Dean and Chapter of Norwich.

they were not summoned to defend a Church that was not in being; to destroy and defend the Church are very contrary things; the Church is not defended, when they take away and sell the Lands of the Church

The Gentleman saith, *The King cannot controule other Courts of Justice, or prevent them from sitting, or acting, & therefore not the two Houses, &c.* It is true, the King cannot controule or prevent his other Courts, for that they are his ordinary Courts of common Justice, to administer common right unto all men, according to the fixed Laws. The Houses make no Court without the King, they are no body corporate without the King, nor Parliament without the King, they all make one corporate body, one Court called the Parliament, whereof the King is the head, and the Court is in the Lords House, where the King is present; and as a man is no man without a head, so the houses severed from the King, as now they are, have no power at all; and they themselves by levying war against the King, & imprisoning of him, have made the Statute for not dissolving, adjourning, or proroging this Parliament of no effect, by the said Acts of their own;

14 H. 8. 3.
36 Hen. 8.
Dyer. 60.
4 Pars, Inst. p. 1.

they

they sit to no purpose without his assent to their Bils, they will not suffer him to consult with them, and treat and reason with them, whereby He may discern what Bils are fit to passe, and what not, which in all Ages the Kings of this Land have enjoyed as their undoubted Rights, and therefore they sit to no purpose by their own disobedience and fault.

17 H.8.c.24. 28 H.8.11. Dier. 2 R.3.11.

For the ordinary Courts at *Westminster*, the Judges in all those Courts are Judges by the kings Patét or Writ, otherwise they are no Judges: the houses can make no Judges, they are no Judges at all who are made by them; the whole and sole power of making Judges belongs to the king: the king cannot controule or prevent his own Judges from sitting and acting, but the Houses He may, for they are not the kings Judges but the Judges of their Houses. In his other Courts, the king commits his power to his Judges by his Patent, and they are sworn to do common right to all men, and the king is sworn not to let them from so doing, the king cannot judge in those Courts, nor controule; but the king is both Judge and Controuler in the Court of Parliament: *Quoad* Acts for his assent or dissent doth give life

or

or death to all Bills. Many Lawyers have much to answer to God, this kingdom, and to posterity, for pusling the people of this Land with such Fancies, as the Gentleman who wrote the Answer to my Paper, and others have published in these Troubles, which have been none of the least causes of the raising and continuing of them: And so I have done with the first part of this Answer.

AD. 2.

For the *Non sequitur*, in the second Section of the Gentl. Answer, the Antecedent and the Consequent are his own.

(libellus:
Quem recitas meus est (ô Fidentine!)
Sed male dum recitas incipit esse tuus.

My words are, that the king is not virtually in the two Houses at *Westminster*, to enable them to grant pardons, for that whole and sole power by the Law belongs to the king: My paper hath no such thing, as that the kings power cannot be derived to others, or the vertue of his power: For his power, & the vertue of his power, is in all Patents to his Judges, in Charters to Corporations, in Commissions

27 H.8.c.24.

missions of all sorts, and in the Parliament assembled by force of his Writ of Summons, so long 'tis they obey him: but when they renounce that power, and claim it not from the King, and declare to the Kingdome that he is not in condition to govern, and imprison him, and usurp to themselves all Royall authoriy, as the two Houses now doe, no reasonable man can affirme that they Act by the power of their prisoner, who hath no power to give them, that by force of armes take all power to themselves.

The Gentl. sayth The *King grants Commissions daily of* Oyre and Terminer, *which he cannot frustrate nor elude.* The King may revoke and discharge the commission by his Writ, as hee may remove all Judges, & place other men in their roome; and any Kings death determines all the Judges Patents at *westminister* Hall, Commission of *Oyre* and *Terminer*, &c. and so he might dissolve both houses in al times by his Writ under the Great Seal, untill that in this Parliament, by his own concession, the king of his goodnesse hath secluded himselfe; which goodnesse hath beene full ill requited.

4 E.4.39.
5 E.4.4.
1 Eliz. Dyer. 165.
1 Mar. Brooks case 447.

The

The Gentl. affirms, *That the power the Parliament hath is concurrent from the King and Kingdom*; vvhich he conceives is proved by the grant of Subsidies to the King by the Parliament. The mistaking of this vword (*Parliament*) hath been mischievous in these times to this Land, and it is affectedly mistaken, which makes the sin the greater, for the two Houses are not the Parliament, as before is declared, and at this time so to inculcate it; when all men know that of the 120 Peers of the Kingdom, who were temporall Peers before the Troubles: there are now not above 30 in the Lords House, and in the House of Commons about 200 of the principall Gentl. of the Kingdom left the House and adhered to his Majesty, who is imprisoned by them shews no such candor as is to be desired.

4 Pars, Instit. p.

It is true, that no Tallage can be laid upon the people of this Land but by their consent in Parliament, as appeareth by the Laws mentioned in the Margent; but you shal finde in M. *Seldens* learned Book, called *Mare Clausum*, a number of presidents in *Henry* the thirds time for Ship-mony justly condemned this Parliament, to the which his Majesty assented; and in truth

25 E.1. confirmatio chartarum chap.6.
34 E. 1.c.1. de Tallagio non concedendo.

true that Ship money was cōdemned before by the said 2 Statutes of 25 E.1 & 34 E. 1. *de Tallagio non concedendo. Danęeler, Englishety*, & many greivous burthens were laid upon the people & borne untill that memorable Princes time. But I am of opinion that the Common Law of the Land did alwais restrain kings from all Subsidies and Tallages, but by consent in Parliamēt; which doth appear by *Magna Charta*, the last Chapter, where the Prelates, Lords, and Comunalty, gave the king the fifteenth part of their moveables. In truth it is no māner of cōsequence, because the king cannot take what he pleaseth of the subjects goods, that therfore they have a concurrent power in Parliament, there have bin many Parliaments & no subsidies granted: Parliaments may be without Subsidies, but Subsidies cannot be without Parliaments: of ancient times Parliaments rarely granted any, unlesse it were in the time of forreign Wars; and in my time, Qu. *Elizabeth* refused a Subsidy granted in Parliament, and in the Parliament 1 *Iac.* none were granted. The Gent. should make a conscience of blinding the people with such untrue colours to the ruine of the king and people.

AD. 3.

The Gentl. affirmes, *That the sending propositions to the King, and desiring his concurrence, is scarce worth an answer, for Subjects may humbly petition for that which is their strict right and property, &c.* The Propositions sent to *Newcastle*, are in print; wherein the two Houses are so far from humbly Petitioning, that they stile not themselves His Majesties Subjects, as appeares by the Propositions.

That they have a strict right or property to any one of these Propositions is a strange assertion, every one of them being against the *Lawes* now in force. Have the two Houses a strict right and property, to lay upon the people what taxes they shall judge meet? To pardon all Treasons, &c. that is one of their propositions. Have they a strict right and property to pardon themselves? and so for all the rest of their Propositions.

These Propositions have been Voted by both Houses, the Kings assent (they being drawne into bills) makes them Acts of Parliament: Hath the King

no right to assent or disassent? Was the sending but a complement? All our Law-bookes and Statutes speake otherwise. This Gentle. and others, must give an account one time or other for such delusions put upon the people.

12 H.7. 20.
1 Iac c. 1.
3 Car. c 7.

AD. 4.

The Gent. saith, *They affirme not, that the Kings power is separated from His Person, so as the two* **Spencers** *affirmed, &c.* His Majesties person is now at *Holnby* under their Guards; have they not severed His power from him when by no power they have left him, he can have two of his Chaplains, who have not taken their Covenant, to attend Him for the exercise of His conscience?

15 Ed. 2 Ex illium Hugonis
Calvins case
1 E. c. 2.
7 pars, Reports, 11.

For the Three Conclusions of the *Spencers*, doe not the two Houses act every of them? They say, His Majestie hath broken His Trust, Touching the Government of His people: They have raised Armies to take Him, they have taken Him, and imprisoned Him; they governe themselves; they make Lawes, impose Taxes, make Judges, Sheriffes, and take upon them *omnia insigna summæ potestatis*: Is not this to remove the King for misdemeanours,

to

to reforme *pea asperte*, to governe in aid of him; the three Conclusions of the *Spencers*? Doe they thinke the good people of *England* are become stupid, and will not at lengeh see these things?

The Gentleman saith, *They doe not separate his power from his person, but distinguish it, &c.* His ower is in His Legall Writts, Courts, and Officers: when they counterfeit the great Seale, and seale Writts with the same, make Judges themselves, Courts and Officers by their owne Ordinances against His consent, declared under his true Great seal of *England* (not by word of month, letters, or ministers onely) their seale is obeyed, their owne Writs, their own Judges, their own Courts, their own Officers, and not the Kings: The time will come when such strange actions and discourses will be lamented.

plowd 4. Eli. 2. 13. the Kings Power and his Person are indivisible.

A D. 5.

The Gentleman goes on, *We take not from the King all power of pardoning Delinquents, we onely say it is not proper to him* quarto modo, *&c.* What do you meane by *quarto modo*? I am sure, *Omnis Rex Anglie, solus Rex & semper Rex*, can doe it, and none else; reade the bookes of the Law to this purpose, collected by that reverend

Stanford, pleas 95. 27. H. 8. c. 24 Dict. 163.

and learned Judge *Stanford*, from all Antiquity to his time, who died in the last yeare of King *Philip* and Queene *Maries* Reigne, you shall finde this a trueth undeniable; and this power was never questioned in any Age in any Booke by any untill this time, that every thing is put to the question: You Gentlemen, who professe the Law, and maintaine the party against the King, returne at length, and bring not so much scandall upon the Law, (which perserves all) by publishing such incredible things.

Bract lib. 3. cap. 14 fol. 132. 1 pars, Instit p. 344. plow. 3. Eliz. 236. 237.

We hold only what the law holds: the Kings Perogative and he subjects Liberty are determined, and bounded, and admeasured by the written Law what they are; we doe not hold the King to have any more power, neither doth his Majesty claime any other but what the Law gives him; the two Houses by the Law of this land, have no colour of power, either to make Delinquents, or pardon Delinquents, the King contradicting: (and the Army under Sir *Thomas Fairfax* (howbeit but Souldiers) doe now understand that to be Law, and doe now evidently see, and assuredly know, that it is not an Ordinance of the two Houses, but an act of Parliament, made by the King, Lords, and

and Commons that will ſecure them, and let this Army remember their executed fellow-Souldiers, and the Law was alwayes ſo taken by all men untill theſe troubles; that have begot Monſters of opinions.

AD. 6.

This Gentleman ſayes, *The Parliament hath declared the King to be in no condition to govern, &c.*

There is no end of your diſtinctions, I and you profeſſe the Law; ſhew me Law for your diſtinctions, or letter, ſillable, or line, in any Age in the bookes of the Law, that the King may in one time be in no condition to govern, and yet have the habit of governing, and another time he may (*viz.*) when the two Houſes will ſuffer him: The Law ſaith thus, *Vbi lex non diſtinguit, non eſt diſtinguendum.*

He ſaies, *the King is not barred from returning to His Parliament*, (as he calls the two Houſes) he knowes the contrary, the whole City knows the contrary, *Nos juris conſulti ſumus ſacerdotes*, (as *Juſtinian* the Emperour hath it, in the firſt book of his *Inſtitutions*) and therefore knowledge and truth ſhould come from our lips: Worthy and ingenious men

will remember, and reflect upon that passage of that good and wise man *Seneca, Non qua itur, sed qua eundum;* follow not the waves of the Lawyers of the House of Commons: God forgive them, I am sure the King will, if they be wise and seek it in time.

A D. 7.

1. Eliz. cha. 1. Cawdreys case 5. pars, fol. 1.

The Gent sayes, *We sweare that the King is our supream Governour over all persons and in all causes, &c.* Why hath he left out the word (*only*?) for the Oath the members now take, is that King *Charles* is now the onely and supreme Governour in all causes, over all persons, and yet they keep their onely Supreme Governour now in prison, and act now in Parliament by vertue of their prisoners Writ, and by a concurrent power in this Parliament, and by their own strict right and property, (as the Gentleman affirmes in his Answer) These things agree well with their Oath, that the King is the onely Supreame governour in all causes over all persons, This Oath is taken now in the Parliament time by all the Members of the House of Commons, and is required by the Law to be taken in all Parliaments, otherwise they have no power, nor co-

This Oath is allowed by the Common Law of the Land.

colour to meddle with the publick Affaires.

This Oath being taken in Parliament, that *the King is the only and Supream Governour in all Causes*, then it followes in Parliament causes; *over all persons*, then over the two Houses; Let them keep this Oath, and we shall bee sure of peace in the Land: and good Lawyers ought to desire peace both for the publicke good, and their private, and not dishonour that Noble profession, as many doe in this miserable time.

The Gent. sayes, *We doe not sweare that the King is above all Law, nor above the safety of his people*; neither doe we so sweare, but his Majesty and we will sweare to the contrary, and have sworne, and have made good, and will by Gods grace make good our Oath to the world, that the KING is not above the Law, nor above the safety of his people, the Law, and the safety of his people, are his Safety, his Honour, and his strength.

AD. 8.

The Gent. concludes, *That Acts of Parliament are not formally binding, nor compleat without the Kings assent, yet the Houses have a virtuall power*

out the Kings particular assent, to doe things in order to publick justice and safety (viz.) In setting up the Excise, in raising and maintaining of Armies, in Taxing the people at pleasure with Fifth and Twentieth part, Fifty Subsidies, Sequestrations, Loans, Compositions, Imprisoning the King, abolishing the Common-Prayer-Book, selling the Church Lands, &c. all these are in order to the publick Justice and Safety.

Mr. *H. P* you are of my profession, I beseech you, for the good of your Countrey, for the Honour of our Science perswade your selfe and others as much as in you lyes, to beleeve and follow the monition and councell of that memorable, reverend, and profoundly learned in the Lawes and Customes of the Land, the Lord *Cooke*, who writes as becomes a great and a learned Judge of the Law (a person much magnified by the twe Houses) in these words: **Peruse over all Books, Records & Histories, and you shal find a Principle in Law, a Rule in Reason, and a Tryall in experience, that Treason doth ever produce fatall and finall destruction to the offender, and never attaines to the desired end (too incidents,**

3 part, Inst. p. 36.

cidents inseperably thereunto) and therefore let all men abandon it, as the poysonous bait of the Devill, and follow the Precept in Holy Scripture, SERVE GOD, HONOUR THE KING, AND HAVE NO COMPANY WITH THE SEDITIOUS.

Conclusion.

I say again, that without an Act of Oblivion, a gratious generall Pardon from His Majestie, the arreares of the Souldiers payd, a favourable regard had to tender consciences, there will be neither Truth nor Peace in this Land, nor any man secure of any thing hee hath.

By me *David Jenkins* Prisoner in the Tower.

A DISCOURSE TOUCHING

The Inconveniences of a Long-continued PARLIAMENT.

A Perpetuall Parliament is repugnant to the Act made this Parliament; for a Trienniall Parliament; for how can every three yeares a Parliament beginne, if this bee perpetuall which may be so if the two Houses please?

2. An adjournment of the Parliament makes no Session, 4 *pars*; *institut. fol.* 27. Howbeit, before the adjournment, the KING gives His Royall assent to some Bills. *Cooke ibid.*

3. There is no Session till a Prorogation

rogation or dissolution of the Parliament.

4 This Parliament as appeares by the Act for not dissolving thereof, set downe in the Printed Statutes of this Parliament, *fol.* 138. cannot be prorogued or dissolved, but by Act of Parliament. There hath been as yet no Act of Parliament in that behalfe: and therefore all the Acts of this Parliament, are Acts of one Session.

Plowd. com 3. H 3. 8. Bro. relation 35. Bro. Par. 86. Dier. 1. Mariæ 85.

5. All Acts of one Session relate to the first day of the Parliament, and all the Acts of such a Parliament are Acts of one day: so the Act for the Trienniall, and the Act for this Perpetuall, are two Acts of one day by the law.

6. 4 *Ed.* 3. *cap* & 36 *Ed.* 3. *cap.* 10. A Parliament is to be holden once every yeare, and more often if need shall bee; those Acts are confirmed by the Act for the Triennial Parliament. How doth a Perpetuall Parliament agree with a Parliament once every yeare, or with the intention of those Lawes? How doth a Parliament every three yeares agree with a Parliament for ever, which may be if the two houses please?

7. The result is this at one day in

Law

Law this Parliament two Acts have passed (for howbeit the one was in 16. *Carol*, and the other in 17 *Carol*, yet both in Law are Acts of one day) the one saith there shall be a Triennial Parliament after the end of the setting of this Parliament: The other this Parliament shall set for ever if they please. The one will have a Parliament with an end, the other, a Parliament without an end.

1 Pars Doct Bonhams case fol. 118 8.E.3.3.30. 33.E. cessavit.32.27. H.G. Annuity 41. 1 Elia Dier, 313

When an Act of Parliament is against common Right or Reason, or repugnant, or impossible to be performed, the Common Law shall controle it, and adjudge this Act to be void; they are the words of the Law.

An Act of Parliament, that a man shall be Judge in his own cause, is a void Act, *Hobbart*. fol. 120.

Begin with Common Right. It is against Common Right, that indebted men should not pay their debts: That if any member of the House of Commons doe any Subject wrong by dispossessing him of his land, or dispossessing him of his goods, or blasting of his fame, or doing violence to his person, that such persons during their lives should not be questioned by a priviledge of Parliament, and that extended also to many other beside them:

themselves, Common Right doth abhorre these Enormities, which a perpetuall Parliament doth beget, besides the utter destruction of all mens actions, real, personall or mixt, who have to do with Parliament-men, by the Statute of Limitation, which confines Suites to certaine yeares. 21. Jac. c. 16.

For Common Reason Parliaments were ordained for Remedies to redresse publique greivances: It is against Reason they should make publique and insufferable Grievances. The Law of the Land allowes no protection for any man imployed in the service of the Kingdome, but for a yeare, to be free from Suites, and in many Suites none at all, howbeit he be in such service; but a Parliament perpetuall may prove a protection, not for a yeare, but for ever, which is against all manner of Reason. 39. H. 6. 39.

For impossibility. The death of his Majesty (whose life God prolong) dissolves it necessarily; for the Writ of Summons is, *Carolous Rex in hoc individuo*, and *Carolus Rex* is in this particular, *Habiturus cloloquium & tractatum cum prelatis & proceribus*, &c. King *Charles* being to have Conference and Treaty with his Prelates and Peares; *Carolus Rex* cannot have

colloquium

1. H. 5. Book, Title Parl. 3. parts

colloquium & tractatum, Conference and Treaty when he is deceased, and therefore it is as impossible for any Parliament to continue as long as they please, as for a Parliament to make a dead man alive.

For Repugnancy. That which is but for a time cannot be affirmed to have continuance for ever, it is repugnant.

The end of the Act 17 *Caroli Regis* which is to continue at pleasure, is in the said act expressed to be to raise credit for Mony for these three purposes. First, for reliefe of his Majesties Army and people in the North. Secondly, for preventing the imminent danger of the Kingdome. Thirdly, for supply of other his Majesties present and urgent occasions. These ends are ended, the reliefe of that Army, the imminent danger supposed was six yeares ago, the supply of his Majesty hath been a supply against Him; take away the end, the meanes thereto are to no purpose; take away the cause, the effect ceaseth; and therefore the three ends of this Act being determined, it agreeth with Law and Reason, the Act should end, the Law rejects things unprofitable and useleſſe.

Sir Anthony Maines case 5. pars. 1. H. 4. 6. Littl. cap. Villeu.

A perpetuall Parliament (besides

that

that it incites men to selfe-ends, destructive of the publique, of which the whole Kingdome hath had sufficient experience) will be a constant charge to the Kingdom ; for that every County and Burrough, who send Members to the Parliament, are by the *Law* to pay Wages to their Parliament-men, which to many Countries will amount above some Subsidies yearly : there are many poore Borough Towns in each County of this Kingdome, who being to maintaine two Burgesses in Parliament, will be quickly beggered, if the Parliament have no end, for all which Reasons it is cleare, that such long continuance of Parliaments, will in stead of a Remedy (which is and ought to be the proper and true ends of Parliaments) become an insufferable Grievance and Oppression to all the people of the *Land*.

The Writ of Summons this Parliament is the *Basis* and Foundation of the Parliament. If the Foundation be destroyed the Parliament fals. The Assembly of Parliament if for three purposes. *Rex est habiturus colloquium & tractatum cum Prælatis, magnatibus & proceribus super arduis negotiis, concernentibus*, 1. Nos. 2. *Defensionem regni nostri*. 3. *Defensionem Ecclesiæ Anglicana.*

næ. This Parliament hath overthrown this Foundation in all three parts. 1. *Nes*. The King they have chased him away, and imprisoned him; they have voted no Prelates, and that a number of other Lordes, about fourty in the City must not come to the House, and obout fourty more are out of Town, the *colloquium & tractatus* are made void thereby. For the King cannot consult and treate there with men removed from thence. 2. *Defensionem regni nostri*, that is gone; they have made it their Kingdome, not His, for they have usurped all his Soveraignty. 3. *Defensionem Ecclesiæ Anglicanæ*, that is gone, that *Ecclesia Anglicana* must be understood necessarily that Church, that at the reste of the writ was *Ecclesia Anglicana*, they have destroyed that too. So now these men would be called a Parliament, having abated, quashed, and made nothing of the Writ whereby they were summoned and assembled. If the writ be made void, all the Processe is void also. that House must needs fall where the Foundation is overthrown, *Sublato fundamento opus cadit*, the foundation being taken away the worke falls, is both a Maxime in Law and Reason.

For some yeares past, there is no crime

crime frõ treason to trespasse, but they are guilty of: all Treasons, Felonies, Robbers, Trespasses are *contra pacem, coronam & dignitatem Regis*, against the peace, Crowne and dignity of the King; as appeares by all Indictments in all ages. *Pax Regis* the Kings peace, *Corona Regis*, the Kings Crown, *Dignitas Regis* the Kings Dignity, are all trod under foot, and made nothing; *Pax Regis*, the peace of the King is become a warre against the King, his Dignity put into prison, and the Crown put upon their own heades.

All the Judges of *England* have resolved, that Noblemen committing Treason have forfeited their office and Dignity; *Their Office is to counsel the King in time of peace, to defend him in time of War*, and therefore those men against the duty and end of their Dignity taking not onely Councell, but Armes also to destroy Him, and being thereof attaint by due course of Law, by a tacite condition annexed to the estate of their Dignity, have forfeited the same, they are the words of the Law, and therefore they have made themselves incapable to be Members of the Upper House.

Nevils case 7. part. 34. 2. Iac.

The

The Oppressions of the people.

Briberyes, Extortions, Monopolies, ought to be inquired after by the House of Commons, and complained of to the King and Lords, What have they done?

The house of Commons cannot by the Law commit any man to prison who is not of the said house, for Treason, Murder or Felony, or any thing but for the disturbance of the publique peace, by the priviledge of the whole body.

They have noe power by the writ, which the King issueth to elect and returne Members of that house, so to do. For the writ for them is onely *ad faciendum & consentiendum*, to those things, whereof his Majesty shall consult and treat with his prelates and Nobles, *& de communi consilio regni* shall be their ordained, as appeares by the Writ. There is no separate power given over the Kings people to them, but onely *ad faciendum ad consentiendum*, and in all times this hath beene expounded and restrained to that which concerned their owne membes in relation to the publique Service, as they are members of the corporate body

4 pars inst. 23,24,25.

Body of the Parliament, whereof the King is the head.

But that the House of Commons have committed any man for Treason Murder or Felony, or for any offence that had no relation to a Member of the House of Commons, as it is against law and reason, so no instance can be given till this Parliament.

All Questions and Tryalls where witnesse are examined, the Examination is upon oath by the Law, by all our Books, Statutes, every dayes practice. Examination without an Oath, is but a loose discourse; therefore the house of Commons not claiming power to give oath, have no power to examine any man.

9 H. 6. 41.
22. E. 3. 22.
5 H c. 8.
3 H. 6. 46.

No man shall be imprisoned by the King or his Councell unlesse it be by Indictment, presentment of his good and lawfull Neighbours where such deeds be done, in due manner, or by processe made by writt originall at the Common Law: this Sratute rehearses *Mag. Charta*, p. 29, and expoundns *Lex terræ*, the Law of the Land there mentioned: this Law bindes all men, and the House of Commons (for they say, they are of the Kings Councell) in all points, but only against the disturbers of the service of the Parliament; and therefore

25 E. 3 c. 4.
Petition of Right.
3 Car.

therefore the Imprisonment of severall persons who are not their Members, and for no disturbance to their Members is utterly against the Law of the Land, and the Franchise of the Freemen of this Realme.

Cuinon licet quod minus, non licet quod majus; he who may not do what is lesse may not do what is greater, they cannot commit a Man for Murder or Felony, much lesse for Treason.

8 Pars, Cook. 120. 27. H. 6. 8.

No Court can fine and imprison, but a Cour of Record, the House of Commons is no Court of Record, the House of the Lords where the King is in person, his nobles and his Judges, and Councell at Law, the Masters of the Chacery assisting, is a Court of Record, and that is the Court of Parliament, where the *Colloquium & tractatus* is. The House of Commons may present Grievances, grant or not grant Adeis, consent or not consent to new Lawes, but for fining or imprisoning any but as aforesaid, is but of a late date, and no ancient usage: They have no Jurnall booke, but sithence *Edw.* 6. time 6. *Hen.* 8. *cap.* 15. doth not prove the House of Commons to bee a Court of Record, it mentions onely to bee entred on Record in the Booke of the Clerke of the Parliament

21 Ed. 4 fol. 46.

if

if any Member depart into the Country. There is no Journall but sit hence *Edw.* 6. time, and that is a remembrance or Memoriall, as 12. *H.* 4.23.

Commons in Parliament ne sont Iadges.

The whole parliament is one corporate Body, consisting of the Head and three Estates : the Court is onely there where the *Consilum & tractatus* is, where the consult and treaty is with the king, which is in the House of Lords onely.

The house of Commons claime not to examine upon Oath any Man ; no Court can be without a power to give an Oath, Courts Baron, Court of Pipowders, County-Court, may and do give Oath , No Court can be without a power to try, no triall can be without Oath ; and therefore the House of Commons not claiming power to give an Oath, can bring no matter to triall, and consequently can be no Court.

14. H. 8. 3. 36. H. 8. Dier. 60. 4. pars. inst. cap. 1.

The behaviour of the Commons at a Conference with the Lords ; the Commons are alwayes uncovered, and standing, when the Lords sit with their hats on, which shewes they are not Colleagues in judgement : for fellow-judges owe no such reverence to their Companions.

When was ever Tine imposed by the House of Commons estreated in the Exche-

11. H. 4. c. 11.

Exchequer? The ejecting of a Member, who hath sitten, is against the Law: for they cannot remove a man out of the House unduly returned, much lesse a man returned duely.

1. H. 4 1.
1. H. 5. c. 1.
8. H. 6. c. 7.
23. H. 1. c. 15.

By these lawes it appeares, that if any undue returne be made, the person returned is to continue a Member, the Sheriffes punishment is 200. l. one to the King, another to the party that is duly elected, Imprisonment for a year without Bail or Mainprise; and that person who is unduly returned, shall serve at his owne charge, and have no benefit at the end of the the Parliament by the Writ *De solutione fœudorum Militum, Civium & Burgensium Parliament*, And the triall of the falsity of the returne, is to be before the Justices of the Assizes in the proper County, or by Action of Debt in any Court, of Record. This condemnes the Committee for undue Elections, which hath been practised but of late times; for besides these Lawes, it is against a Maxime in the Common Law an Averment is not receivable against the returne of the Sheriffe, for his Returne is upon Oath, which Oath is to be credited in that Suit wherein the Returne is made.

3. E. 4. 20.
5. Ed. 4. 41.

The said Statutes condemne and make

make those Members no Members, which were not resiant in the Country and Boroughs, for which they were elected, at the time of the teste of the VVrit of the Summons of the Parliament, and any abusive practice of late times to the contrary is against the Law, and ought not to be allowed.

Assault upon Parliament-men.

If a Parliament-man, or his Meniall servant be assaulted, beaten, or wounded, in the Parliament-time, proclamation shall be made where the deed is done, that the Offender shall render himselfe to the Kings Bench, within a quarter of a year after proclamation made, and the Offence there to be tried, for Default of Appearance the Offender is declared, attainted of the Misdeed, and it is accorded that thereafter it be done likewise in the like case. 5.H.4.c.6. 11.H.6.c11

Serving of processe upon a Lord of the Parliament punished in the Lords House. Bogo de Clare 18. E. 3 4. pars inst. fol. 24.

Serving of processe upon *Thornsby* inquired of in the *Chancery*, and there the Offenders were convicted. 10. Thornsbyes case, Clerke of the Parl. ibid. 10. E.3.

The premises prove, that breaches of priviledge of Parliament may be punished

punished else where than in Parliament.

Upon all this discourse, it is easie to discerne what fruits may be expected from this Parliament, continuing as long as the two Houses please; and that there is no safety for this common-wealth, but by the Observations of their ancient Pranchises, customes and Lawes.

Conclusion.

I Say againe, that without an Act of Oblivion, a gracioue generall Pardon from His Majesty, the Arreares of the Souldiers paid, a favourable regard had to tender Consciences, there will be neither Truth nor Peace in this Land, nor any man secure of any thing hee hath.

AN

AN APOLOGY FOR THE ARMY.

Touching the Eight Quæries.

THese Treasonable and insolent *Quæries* make the Army the Houses Subjects; and not the Kings. *None by the Lawes of this Land can in this Kingdom have an Army but his Majesty.* Bracton. fol. 118. Stamford, fol. 2.

It appeares, the Army doth now evidently perceive, that they were mis-led by the specious pretences of *Salus populi*, the maintenance of the Kings Honour, and of the maintenance of the Lawes of the Land, and Liberties of the Subject, to take up Armes against their naturall Liege-Lord and Soveraigne the King: the people is the Body, the King is the Head; was the Body safe when the Head was distressed and imprisoned?

For Lawes and Liberties have not the prevailing party in the two Houses destroyed above an hundred Acts of Parliament, and in effect, *Magna Charta, & Charta de Forresta*, which are the common Lawes of the Land? Doth Excise, the Fifth, and Twentieth parts, Meale-money, and many more Burdens which this Land never heard of before, maintaine the Liberties of the people? You and that party of the two Houses, made the Army by severall Declarations before Engagement, beleive that you would preserve the Kings Honour and Greatnesse, the Lawes and Liberryes of the people: The Army and the whole Kingdome now *facta vident*, see your Actions, and have no reason longer to beleive your Oathes, Vowes and declarations; and since that party in the two Houses refuse to performe any thing according to their said oathes, Vowes and Declarations, the Army and the Kingdome may and ought, both by your owne principles, and the Lawes of the Land, to pursue the ends for which they were raised. And so your first *quere* is resolved; whereby it is manifest, that specious pretences to carry on ambitious and pernitous Designes, fix not upon the Army, but upon

Mag. Clar. c. 1. & u't. All the Act concerning the King, Church and Churchmen. 25. Ed. 1. cap. 1.

upon you, and the prevailing party in both Houses.

The solution of the second Quere.

The Army, to their eternall honour, have freed the King from imprisonment at *Holmby*. It was High Treason to imprison His Maiesty: to free his Majesty from that imprisonment was to deliver him out of Trayterous hands, which was the Armyes bounden duty, by the Law of God and the Land. That party refused to suffer his Majesty to have two of his Chaplains for the exercise of his conscience who had not taken the Covenant; free accesse was not permitted; doth the Army use his Majesty so? all men see that accesse to him is free, and such Chaplaines as his Majesty desired are now attending on his Grace: Who are the guilty persons? the Army, who in this Action of delivering the King, act according to Law, or the said party who acted Treasonably againg the Law? who doth observe the Protestation better, they who imprison their King, or they who free him from prison?

3 par. Inst. f. 2. 39. Eli. 1 Jac. bid. 3 & 3. E. 6. c. 2 11 H. 7. c. 1.

That this Army was raised by the Parliament, is utterly false: The Ar-

my was raiſed by the two houſes upon the ſpecious pretences of the Kings Honour, common ſafety, and the preſervation of Lawes and Liberties; which how made good, hath beene ſhewed before, and all the people of the Kingdom do finde by wofull expetience.

14 H. 8. 3. 36 H 7. Dier. 60. 4. pars Inſtit. p. 1. 3. 12. 14. 16. R. 2. c. 1. 5. Eliz. c. 2. 17. Carol. The Act for the continuance of this Prliament.

The two Houſes are no more a Parliament, than a Body without a Head a Man. The two Houſes can make no Court without the King; they are no Body Corporate without the King; they all, Head and Members, make one Corporate Body. And this is ſo clear a Truth, that in this Parliament, by the Act of 17. *Caroli* it is declared, That the Parliament ſhall not be diſſolved or prorogued but by Act of Parliament: but the two Houſes may reſpectively adjourne themſelves. Two Houſes and a Parliament are ſeverall things, *Cuncta fidem vera faciunt*: all circnmſtances agree to prove this truth. Before the *Norman* Conqueſt, and ſince to this day, the King is holden *Principium, Caput & Finis*, that is, the beginning, Head, and chieſe end of the Parliament, as appeareth by the Treatiſe of the manner of holding of Parliaments made before the *Norman* Conqueſt; by the Writ of Summons of

4. par. Inſtit. p. 18. 4. par. Inſtit. p. 4. 9. 5. Eliz. c. 1. 2

of Parliament whereby the Treaty and *Parler* in Parliament is to be had with the King onely; by the Common Law, by the Statute-Law, by the Oath of Supremacy taken at this, and every Parliament, it doth manifestly appeare, that without the KING there can be no colour of a Parliament.

How many Votes have they revoked in one Session, yea, and Bills? Was there ever the like done? Nay, is not the constant course of Parliaments, violated and made nothing thereby? They are guarded by armed men, divide the publike Mony among themselves, and that party endeavours to bring in a Forraigne Power to invade this Land againe. If they be no Parliament, as clearely they are none without his Majesty, they have no priviledges, but do exercise an Arbitrary, Tyrannicall and Treasonable power over the people.

By the Law of the Land, when Treason or Felony is committed, it is lawfull for every Subject, who suspects the Offender, to apprehend him and to secure him so that Justice may bee done upon him acccording to the Law.

7 E.4.20.
8 E 4.3.
9 E.4 27.
4 *H* 7.18.
27 H.8.23.

You say, the disobedience of the

Army is a sad publick president, like to conjure up a spirit of universall disobedience. I pray object not that conjuring up to the Army, whereof you and the prevailing party in the Houses are guilty, who conjured up the spirit of universall disobedience against his Majesty, your and our only Supreme Governour, but you, and that party in the two Houses, and even then when the House of Commons were taking and did take the said Oath of Supremacy? For the Covenant you mention, it is an Oath against the Lawes of the Land, against the petition of Right, devised in *Scotland*, wherein the first Article is to maintaine the Reformed Religion in the Church of *Scotland*: And certainely there is no subject of the English Nation doth know what the Scottish Religion is. I believe the Army tooke not the Covenant. No man by the Law can give an Oath in a new case without an act of Parliament; and therefore the imposers thereof are very blameable, and guilty of the highest Crime.

2. par. Coll. 11. Ord. pag. 813.
3. par. Inst fol. 65. Petition of Right, 3 Car. a pas instit. 119.

The Writer of these *Quæres* seems to professe the Laws; let him declare what Act of Parliament doth justifie the tendring, giving, or taking of the said Oath: he knoweth there is none he,

he knoweth that all the parts of it are destructive to the Laws and Government to maintaine which the Law of Nature, and the *Law* of the Land had obliged them. The Oath of the Covenant makes the Houses supreme Governours in causes Ecclesiasticall; the oath of Supremacy makes the King so: and yet both taken by the same persons, at the same time. What credit is to be given to persons who make nothing of Oathes, and contradict themselves? How doe the Covenant & the Oath of Supremacy agree? How do their protestation and the Covenant agree? How do their Declarations and Oathes agree? The Lord be merciful to this Land for these Oaths.

Mag Cha i. cap. 1. & ultimo Articuli cleri, and many other Statutes. 16, E. 4. 10.

It is a sad thing to consider that so many Gentleman who professe the Lawes, and so many worthy men in both Houses should be so transported as they are, knowing that the lawes of the Land from time to time, and in all times, are contrary to all their actions, and that they yet should amuse themselves and the people with the word parliament without the King and with the Covenant; whereas they know they are no Parliament without his Majesty: and the English-men r[illegible]owour the Kingdom should swear

a Covenant to preserve the Reformed Religion of *Scotland*, in Doctrine, Worship, Discipline and Government, which they doe no more knowe than the Doctrine, Worship, Discipline and Governement of *Prester John* in *Ethiopia*; if they consider it, they cannot but discerne that this is a high desperate and impious madnesse.

Be wise in time: VVithout the King and the Lawes, you will never have one houre of safety for your Persons, Wives, Children or Estates. Be good to your selves and to your posterities; apply your selves to be capable of an Act of Oblivion, and of a generall pardon, and to be able and willing to pay the Souldiery, and to allow a reasonable Liberty for mens consciences; and God will blesse your endeavours: and the people (to whom you are now very hateful) will have you in better estimation.

The third Quære is thus answered.

You resemble the Army to *Jack Cade* and his complices, and you cite the Act of Parliament of 31 *Hen. 6. cap* 1. And that it may appeare who acts the part of *Jack Cade*, you and that

that party in the two Houses, or the Army, I thinke it necessary to set down the said Act in words at length as followeth.

First *Wheras the most abominable Tyrant, horrible, odious and arrant false Traytor Iohn Cade* calling and naming himselfe sometime *Mortimer*, sometime Captaine of *Kent*, which name, fame, acts and fates are to be removed out of the speech and minds of every faithfull Christian man perpetually, *falsly and trayterously purposing, and imagining the perpetuall destruction of the Kings said Person, and finall subvertion of this Realm, taking upon him Royall Power, and gathering to him the Kings people in great numbers, by false subtile imagined language, and seditiously making a stirring Rebellion & Insurrection, under colour of Justice, for Reformation of the Lawes of the said King, robbing, stealing and spoyling great part of his faithfull people.* Our said Soveraigne Lord the King considering the premises, with many other which were more odious to remember, *by the advice and consent of the Lords aforesaid and at the request of the said Commons*, and by authority aforesaid, hath Ordained and Established that the said *Iohn Cade*, shall be reputed, hath named,

med, *and declared a false Traytor to our Soveraigne Lord the King*; and that all his tyranny, acts, fates, and false opinions shall be voided, abated, nulled, destroyed and put out of remembrance for ever: and that all Inditements, and all things depending thereof, had and made under the power of Tyranny, shall be likewise void annuled, abated, repealed, and holden for none: and that the blood of none of them be thereof defiled nor corrupted, but by the authority of the said Parliament clearly declared for ever: and that all inditements in times coming, in like case, under power of Tyranny, Rebellion and stirring had, shall be of no Record nor effect, but void in Law; *and all the Petitions delivered to the said King in his last parliament holden a Westminster, Novemb. 6. in the 29 of his reign, against his mind, by him not agreed, shall be taken and put in oblivion, out of remembrance*, undone, voided, annulled, and destroyed for ever, as a thing purposed against God and conscience, and against his Royall estate and Preeminence, and also dishonorable and unreasonable.

Now we are to examine who hath trod in the steps of *Iack Cade*, you and the

the present prevailing party of the two Houses *tooke upon them, and doe take all the Royall power in all things*; so did *Iack Cade*, as apppeares by the said Act; the Army do not so: *They who imprison the King purpose to destroy his person* (our imprisoned Kings alwayes * fared so) *Iack Cade did* likewise so purpose: The said party in the two Houses *made a stirring under colour of justice for reformation of the Lawes*; so did *Iack Cade*: The Army doe not so, but desire that the Lawes should be observed: *Iack Cade levied Warre a gainst the King*, The Army preserves him: *Iack Cade* dyed a *Declared Traytor to his Soveraigne Lord the King*, This Army might have lived to have the glorious true Honour of being restorers of their King.

* Edward I Henry 6. Richard 2.

Simon Sudbury Archbishop of *Canterbury* was murthered by *Iack Straw*: *William Laud* Archbishop of *Canterbury* was likewise murthered by that party of the two Houses, for that an Ordinance by Law cannot take away any mans life, and his life was taken away by an Ordinance of the two Houses, the Army had no hand in it. Many misled by *Iack Straw*, perceiving his Trayterous purposes fell from him: and as that was lawfull, just, and

25 Ed, 3. 4. 28 Ed. 3. 3. Petition of Right.

and honourable, so it is for this Army to adhere to their naturall King, and so endeavour to settlle the Kingdom againe in the just Lawes and Liberties thereof: *London* did then right worthily adhere to the King and the Lawes, and not to *Jack Straw* and his specious pretences, and it is hoped they will now so do: By this it appeares, that the Gentlemans Discourse touching *Jack Cade*, fastens altogether on his party, and cleareth the Army.

To the IV. *which is resolved thus.*

The Arreares of the Army (howbeit it is the least thing they look after) yet it being not paid them, it is by the Law of the Land a sufficient cause to leave and desert that party in the Houses: A person who serves in any kind, and is not paid his wages, the desertion of that service is warrantable by the Lawes of the Land: You say, the Houses will reforme all things when the Army doth disband: Who will believe it? Will any believe that the setling of the Presbytery will doe it? Will any believe that his Majesty wil passe the Propositions sent to Him to *Newcastle*? Will any man believe that this

Fitz N. B. 159. 9. E. 4. 20. 38. H. 6. 27. 23. Eliz. Dier. 369.

this Kingdom will ever be quiet, without his Majesty and the ancient and just Lawes? Can the Members of the Army conceive any of them to be safe in any thing without a pardon from his Majesty? have they not seen some of their Fellowes hanged before their eyes, for actions done as Souldiers? Shall the Kingdom have no account of the many Millions received of the publique Money? Will the Members of the Houses accuse themselves? Shal private and publique Debts be never paid? Shall the Kingdome lie ever onburthens of Oppression and Tyranny? There is no visible way to remedy all these Enormities, but the power of the Army.

To the V. *which is solved thus.*

The Kingdom hath better assurance of Reformation from the Army, than from the Houses, for that in their Military way they have been just faithful and honourable, they have kept their words: That Party of the Houses have been constant to nothing but in dividing the publique Treasure among themselves, and in laying Burdens upon the people: and in breaking all the Oathes, Vowes, and promises they

ever

2,&.3. E.6. c.2. 11.H.7.c.1. Calvins case.7.pars, Cook.fo.11.

ever made: As the Army hath power, so now adhering to the King, all the Lawes of God, Nature, and Man, are for them, their Armies are just, and blessed; and the King is bound in justice to reward his Deliverers with honour, profit, and meere Liberty of conscience-

To the VI. *Quære.*

All the sixth *Quære* containes calumnies cast upon the Army; the new Elections are against all the Lawes mentioned in the Margin, and are against the Ejection of the old Members; and by this it may be judged, what a House of Commons we have. By the said Lawes it appeares, that if any undue returne be made, the person returned is to continue a Member, the Sheriffes punishment is two hundred pounds, one to the King, and the other to the party that is duly elected; Imprisonment for a yeare without Bail or Mainprise; and that person who is unduly returned shall serve at his own charge, and have no benifit at the end of the Parliament. by the Writ *De solutione Militum, Civium, & Burgensium Parliament.* And the triall of the falsity of the Returne, is to be before the

11.H.4.c.1. 1.h.5.c.1. 8.h.6.c.7. 23.h.6.c.15.

the Justices of Assizes in the proper County, or by Action of Debt in any Court of Record. This condemnes the Committee for undue Elections, which hath been practised but of late times: for besides these Lawes, it is a Maxime of the Common-Law, an Averment is not receivable against the Returne of the Sheriffe, for his Returne is upon Oath, which Oath is to be credited in that Suit wherein the Returne is made. 3.E 4.20. 5.Ed.4.42.

The said Statutes condemne Elections of such men who were not resiant and dwelt in the County or Boroughs for which they were returned; and any abusive practise of late times to the contrary, is against the Law, and ought not to be allowed.

To the VII. *Quære.*

The *Quærist* saith, that the Votes of the Independents in the Houses were arbitrary, exhorbitant, and irregular, and that they disposed and fingred more of the common Treasure than others, That whole *Quære*. I believe is false and slanderous; and the Author ought to make it good, or else to undergoe the Law of *Talion*; which is to suffer such punishment, failing 37.E.5. c.17.

ing of his proofe, as the accused should in case of proofe made.

To the VIII *Quære.*

This *Quære* is all minatory and threatning, and the contrary of every part is true: by the deliverance of the King and Kingdom from the bondage of that party in the two Houses by the Army, their renown will be everlasting; they secure themselves, they content and please the Kingdome, City and Countrey, as appeares by their confluence to see his Majesty and the Army, and their acclamations for his Majesties safety and restitution; all which doth evidence to every one of the Army, how acceptable the intentions of the Army are to the people of this Land, who have been so long inthralled.

Sir *Thomas Fairfax*, let your Worthinesse remember your extraction and your Ladies, by the grace and favour of the Prince, to be in the ranke of Nobility Remember what honour and glory the present age and all posterity will justly give to the Restorer of the King to his Throne, of the Lawes to their strength, and of the afflicted

afflicted people of this Land to peace: Let the Colonels and Commanders under you and likewise your Souldiery, rest assured, that they shall not onely share in the renowne of this Action, but also shall have such Remuneration as their haughty courage and so high a virtue doth deserve. This his Majesty can and will do, the Houses neither will nor can: and God blesse you all and prosper you.

I *Conclude all, as I have alwayes done: Without an Act of Oblivion, a generall pardon, the arreares of the Souldiery paid, and a regard to liberty of Conscience, this Kingdome will certainely be ruined.*

Judge

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Iudge Ienkins PLEA

Delivered in to the Earle of *Manchester*, and the Speaker of the House of COMMONS,

Sitting in the CHANCERY at WESTMINSTER,

Which was read by their command in open Court, the 14. of *Febr.* 1647. And there avowed.

By DAVID JENKINS Prisoner in *Newgate*.

LONDON,
Printed in the yeare, 1648.

Iudge Ienkin's PLEA Delivered into the Earle of *Mancheſter*, and the Speaker of the Houſe of COMMONS, ſitting in the CHANCERY at WESMINSTER.

I Have been required to appeare in the Chancery the twelfth of this inſtant *February*, before Commiſſioners appointed by the two Houſes for the keeping of their Great Seal, and managing the Affaires of the Chancery.

I cannot, nor ought, not will ſubmit to this power; I am a Judge ſworne to the Lawes. The Law is Firſt, that this Court is *Coram Rege in Can-*

4.par inst. fol. 79. 8.H.4.fol.5. 9.E.4. f.15.

Cancellaria : Secondly, the Chancellor or Keeper of the great Seale is by delivery of the great Seale to him by the KING, and by taking of an Oath.

The Oath followeth in these words.

42.pars inst. fol.88. 10.R.2.rot Parl.num.8.

1. *Well and truly to serve our Soveraigne Lord the King, and his people in that Office.*

2. *To do right to al manner of people poore and rich, after the Lawes and usages of this Realm.*

3. *Truely to Councell the King and his Councell to conceale and keep.*

4. *Not to suffer the hurt, or disherriting of the King, or that the Rights of the Crown be decreased by any means as far as he may let it.*

5. *If he may not let it, he shall make it clearely and expresly to bee knowne to the King with his advice and counsell.*

6. *And that he shall doe and purchase the kings profit in all that he reasonably may, as God him help, and the contents of Gods booke.*

The

The said Commissioners among others have imprisoned their King, have declared to the Kingdome that they will make no Adresses or Applications to him, nor receive any from him. Declar. 17. Ian. 1637.

Have counterfeited a new great Seal, and after destroyed the true old great Seale which belonged by the Law to the Kings custody. Articul sup. chartis. c. 5.

These Commissioners have had no Seale delivered to them by his Majesty, have taken no such Oath, or full ll keep it, and for these evident reasons grounded upon the Fundamentall Lawes of this Land, these Commissioners have neither Court, Seale, or Commission, and therefore I ought not against the Lawes, against my knowledge, and against my conscience submit to their power.

To affirme that they maintaine the Kings Power and Authority in relation to His Lawes (as they often doe) and restraine onely his Person, is strange.

They must be remembred that the House of Commons this Parliament gave in charge to Mr. Solicitor upon the prosecution of the Bill of attainder against the Earle of *Strafford*, to declare the Law to be, *that Machination* M. Solicitor pag. 27.

tion of War against the Laws or Kingdome, is against the King, they cannot be severed.

Ms. Pim. P.16.

Mr. *Pym* had in charge likewise upon the same prosecution to declare *That the King & his people are obliged one to another in the nearest relation, he is a Father, and the child, in law is called* pars patris, *he is the Husband of the Common-wealth, they have the same interests, they are inseperable in their condition be it good or evill; he is the Head, they are the body, there is such an incorporation as cannot be dissolved without the destruction of both.* This agrees with our Lawes, and the Law of this Land: In that argument of Mr. Sollicitor, and discourse of Mr. *Pim* directed by the House of Commons are contained the true rights, liberties and laws of the people deduced from our Ancestors in all ages, and wherein there is noe line or word but is agreable to the Lawes, and is a necessary and usefull book to be perused and followed by all; which book was published by Order of the House of Commons. If the doctrine of that book had been followed, we had not been so miserable as we are; neither had these great evils ensued, for the which the Land mourns.

20. H.7. fol. 7.
8. H.7. fol. 12.
1. E.5. fol 3.
4. E.4. fol. 25.
5. E.4. fol. 29

In this Month of *February*, six years now past, the onely Difference betweene His Majesty and the prevailing party in both Houses, was touching the power of the *Militia*, which in plaine *English* is, Power over Sea and Land: this was the sole quarrell: the King and His Progenitors have had it in all Times, the Lawes have fixed it upon them; they have used it for the Weale of the people: none of the Subjects ever had it or claimed it; the Lawes deny it them; for the time they have had it, our pressures have been miserable.

Collect. Ordinanc. 1 pars, fol. 66, 67. 81.

His Majesty hath a numerous Issue, and so hath his *Father*: many great persons of *England*, and *Scotland* are of the Bloud Royal, and all the Kings of *Christendom* are of the same Bloud, so long as the Lawes last, or any of the said persons, or their Descendants be living, this people shall have neither peace nor profit; but all the confusions that are imaginable will attend them.

And therefore (at length) be good to your selves, restore our King, receive from him an Act of Oblivion, a generall pardon, assurance for the arreares of the Souldiery, and meet satisfaction to tender consciences.

February 12 1647. By *David Jenkins*. Prisoner in Newgate.

I

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W

An

THE ANSVVER OF *IVDGE JENKINS*, TO THE IMPUTATION PUT UPON HIS PLEA IN *CHANCERY*.

Which was read in open Court the 14. of *Feb.* 1647.

And avowed by *David Jenkins* Prisoner in *Newgate*.

Printed in the yeare, 1648.

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THE ANSWER OF Iudge Ienkins TO THE IMPUTATION Put upon him in *CHANCERY*.

I Have no disposition, nor ever had, to be known by any publique Writing: these miserable Times, which fill many mens mouthes, and most mens eares with notorious Untruths, thereby to blast and destroy the Kings Sacred Majesty, his Lawes and Government, and to bring in a confusion; enforceth me at this time (who formerly have written nothing but for the publique)

to let the World know how unjustly the Pamphleter of this Weeek, Licensed by our *Reformers*, hath traduced me touching a suit commenced intheir Court of *Chancery* against me, by one M. *Ernely* a *Wiltshire* Gentleman, touching the Estate of one M. *Thomas* of *Glamorganshire*: the truth whereof is as followeth:

M. *Thomas*, whose Father and my Grandfather were two Brothers, about seventeene yeares past made his Will, and declared by the same his Son (being then of very tender yeares) a Ward to his Majesty, and made him Executour, and my selfe during his minority, (referring to his Wardship) to administer his Estate personall and testamentary, and to be accountable to his Son when he came to Age: And seventeene yeares sithence the Father died.

This Estate consists in a Stocke of Sheep, so disposed by me as the number are yet continued, and for the number and condition, they were at their Delivery backe, to be made as good by those persons who had the charge of them, as they were when they were received.

The rest of the Estate (for any considerable part) was in Morgages of Land,

Land, forfeited in the life of my young Cousin *Thomas* for many of them, and many absolutely purchased by me in his name in his life time, for the which I am not yet payd.

The Land discended, and ought, upon Sir *Edward Thomas*, my Cousins Heire at Common Law; so that Mr. *Ernely*, the Plantiffe in *Chancry*, hath no coulour for the Land: For my young Cousin dyed without issue about 17 yeares old, and could not dispose of the Inheritance of any Land by any pretended Will: The stock of Sheep remaines, if the Plantiffe and the *Reformers* have not plundered them: For the Mony it came all to the Court, it was to satisfie the King for the Marriage.

The colour the Plantiffe hath, is this: After the death of my old Kinsman M. *Thomas*, by undue meanes the young Gentleman was married to M *Ernelys* Daughter, in a way of Ravishment, being both children, without one penny payd, or consent of Friends or Kindred: For the which, a Suit of Ravishment depended against M. *Ernely* and others in the Court of *Wards*.

The young Gentleman dyed about 17. yeares of age, sithence these con-

fusions without issue ; and some houre before my young Cousins death (who dyed of a pestilent Feavour) Mr. *Erneley* pretends a Will made by him, and that he made his Wife (M. *Erneleyes* Daughter) his Executrix : His said Wife dies soon after, & is pretended to make a Nuncaptive Will, and to make her Father (M. *Ernely*) her Executor, and so pretends as Executor of an Executor of an Executor : which pretended Wills, he saith he hath proved in the Courts of his Friends, the *Reformers*.

Whether such VVills were made or no, must receive an equall examination, and of what validitie they are, being pretended to be made by children *in extremis*, if made at all? And whether an Executor of an Executor of an Executor can maintaine an account by the Law of the Land? And whether (J being Executor during the Minority, *viz.* the VVardship) my young Cousin could make such a Will as is pretended, he being no executor till his full age.

37. H. 6. 5. 21. E. 4. 24. The Age touching wills, the Law of this Land determines to be 21. yeares, and before that age at common Law an use could not be devised. For wills touching goods and chattels, our Law for

for many ages hath left the same to the decesion of the Civill and Cannon Lawes, in the Bishops Courts: That Law, (as *Justinian* hath it in the second Booke of his *Institutions*, the 12. *chap.*) is, *Impuberi non licet testari*: this *Pubertas* begins at 14. it is *Plena pubertas* at 18. yeares of age: The question is, whether this *jus testandi* is in *pubertate plena*, or *pubertate inceptà*: *Pigots Case*, 5. part of *Cookes Reports*, the Doctors affirmed, that 17 yeares of age was a full age as to an infant Executor to dispose of Good, : this opinion hath been by others sithence denyed. Sir *Edward Cook* 11 part, *instit. sect.* 123 saith. He must be 10. which is the time of *plena pubertas*. 2 *Hen.* 4. 12. an infant of 18 yeares of age may be a deisei Tour Sir *Joh. Dodderidge* in his booke called, *The Office and Duty of Executors*; which they say is his, and it is a learned and laborious *Treatise*, *fol.* 347, de ivers, that this opinion of 17 yeares, for that ability in an infant, hath been reported otherwise: this latter opinion comes neerer the Common Law, and the Statute Law of the Land: which Comman Law, and Statute Law, gives infants no power by Deed or Will to make any disposition of any thing

they have, before they be 21. yeares of age.

It seemes also more reasonable, because infants at 18 yeares have, by the intendment of *Law*, as they grow in yeares, more use of reason to discerne what is fit for them to do and Act. And for a meere stranger to sue in a Court of Conscience, who pretends by such Wills of Infants (the infant Husband being ravished) against the will of the kindred of the deceased, who dyed six yeares sithence without issue (being 17 yeares of age) and that any part of his part of his estate should go that way by a course of equity, unlesse the Law be for Mr. *Ernely*, who payd not a penny with his Daughter, and who would have the Husband of his Daughter bring him a Portion, by his pretended Title of an Executor of an Executor of an Executor, *viz.* of an infant the Executor of another infant, the Executor of a third person, seemes very strange.

The said Licensed Historiographer of theirs, hath published the 16 of this present Moneth of *February*, 1647. *That I out of a desire to keep the Estate have in a suit in the Court of Wards, in my Cousins life time, pleaded to the Iurisdiction of that Court.* It is true, I did

did so: for I conceived that the Estate would be unsafe in Mr. *Erneley's* hands, and I was willing to preserve it till my young couzen came to be of age, to dispose of it himselfe, according as I was trusted.

The Law being, that the Court of *Wards* had no jurisdiction over the personall Estate for then the Marriage was payd for to the King, and all due to the King ascertained. It is true that that was insisted upon as was just for to preserve the Estate from M. *Ernely*, who would have made what account he pleased to my Cousin at his full age: and this is the truth of that businesse.

32 H. 8. 4 pars in fol. 201, 202

That I declined not the Jurisdiction of the *Chancery*, to keepe an Estate in my hand, appeares, by my declining long sithnnce the power of the House of Commons to Examine me; and the *Reformers* have all my Estate: VVhat would Mr. *Ernely* have, when they (the *Reformers*) have all already, or can have from me, if he had any colour?

I desire the good people of this City to observe what notorious Untruths their Licenced Histographers publish to delude the people, in this particular case they publish.

First.

First, That *the Suite against me, is in the behalf of an Orphan:* M. *Earneley* (who is Plaintiffe in their Court) is a *Wiltshire* Gentleman, at the least of 50. yeares of age, there is their *Orphan.*

Secondly, That *I made a speech to the people at the Hall door, that the questioning of me for what I had done for the* KING, *was illegall; and that the Judges had no power to try me, the* KING *being absent*: Another notorious untruth! For I protest to God all that I said was onely this, *God preserve the KING, and the Lawes.*

Thirdly it is said that comming to the Barre, J stirred not my Hat: All the Lawyers then at the Barre were uncovered; whereof J held it a civility, to be also uncovered: and so J was, as they all know.

Fourthly, That the *Earl* of Manchester *should say, I received a great estate in Mony, of the Orphans estate:* As there is no truth in it, so it is most untrue that the said Lord so said (as all men present can testifie,) The truth is, they care not what they do, what they say, what they swear, nor what they write: Witnesse the Declaration of a prevaling party of the H. of Cōmons, of the 11. of

this

this instant *February*; who contrary to the Oath of Allegiance, the Oath of Supremacy, the Protestation, their solemne League and Covenant, their Declarations to make His Majesty a glorious King, fearefull to his enemies, and beloved of his subjects; and yet now, after 22. yeares, they would insinuate to the people, that this King, whom they have so much magnified, hath poysoned his owne Father.

*Fi*rstly, it is a publike notorious untruth. That *the Parliament hath published a Declaration against the King, of the* 1. *of this instant February*; whereas it is well knowne to be the Declaration of the prevailing party of the House of Commons onely, without the Lords: and so they would make that prevailing party only to be the * Parliament.

Let the people of *England* believe their five sences how it was with them even yeares agoe, and before, during his Majesties Reign: how this Kingdome abounded then with Peace, Plenty, and Glory, to the admiration & envy of other Nations: and now let them consider and judge by their Sences, whence those men (whom nothing could satisfie, but all Power both by Sea and Land, which in truth is the Regality

* Their licensed Historiographer who published this, is called their Kingdoms weekly Post, from Wednesday Feb. 7. to Wednesday the 16. of Feb. 1647

and Kingſhip, which they call the *Militia*) have uſurped the ſaid Power Regal, whether they have not by Impoſtures and Deluſions, diffuſed among the people by themſelves and their Agents, brought a flouriſhing Kingdome to the moſt deplorable condition it now is in.

To the end that this Kingdom may not utterly be ruined, God incline their hearts to reſtore his Majeſtie, and for their own and there Poſterities ſake to receive from his Majeſtie an Act of Oblivion a generall Pardon, aſſurance for the Arrears of the Souldierie, and meet ſatisfaction for tender Conſciences.

DAVID IENKINS,

Judge

Judge Jenkin's REMONSTRANCE TO THE LORDS and COMMONS the 21. February. 1647. AT *WESTMINSTER.*

I Desire that the Lords and Commons of the two Houses, would be pleased to remember, and that all the good people of *England* do take notice of an Order of the House of Commons this Session, for publishing the Lord *Cook* his Bookes: which Order they may finde printed in the last leafe of the second part of his Institues, in these words: *viz.*

Die

Die Mercurij 12. *May*. 1641.

UPon Debate this Day in the Commons House of Parliament, the said House did then desire, and held it fit, that the Heire of Sir *Edward Cooke* should publish in print the Commentary upon *Magna Charta*, *the Pleas of the Crowne*, and *the jurisdiction of Courts*, according to the intention of the said Sir *Edward Cooke*; and *that none but the Heire* of the said Sir *Edward Cooke*, or he that shall be authorized by him, do presume to *publish in print* any of the foresaid Bookes, or any Copy thereof.

H. Elsigne Cler. Dom. Com.

And I doe further desire them that they would reade and peruse M. *Solicitor Saint-Iohn*, and M. *Pim*, their Bookes published likewise this Session, whose *Titles* are as followeth, *viz.*

An

An Argument of Law, concerning the Bill of Attainder of High Treason of Thomas *Earle of* Strafford.

At a Conference in a Committee of both Houses of Parliament.

By M. Saint-Iohn *His Majesties Sollicitor Generall.*

Published by Order of the Commons House,

London, Printed by *G.M.* for *John Bartlet,* at the signe of the Guilt Cup, neer *S. Austins* Gate in *Paules* Churchyard, 1641.

And the Speech or Declaration of Iohn Pim *Esquire,*

After the Recapitulation or summoning up of the Charge of High Treason, against Thomas *Earle of* Strafford, 12. April, 1641.

Published by the Order of the House of Commons.

LONDON,
Printed for *Iohn Bartlett,*
1641.

1 Nothing

1. NOthing is delivered for Law in my Books, but what the H. of Commons have avowed to be Law in Bookes of Law, publiſhed by their command this Seſſion, and agreeable to the Bookes of Law, and Statutes of this Realme, in all former Times and Ages.

2. The ſuppoſed offence charged on me is againſt the two Houſes, and none ought to be judges and parties, by the Law of the Land, in their own caſe.

3. I deſire the benefit of *Magna Charta, the Petition of right*, and other good Lawes of this Land, which ordain that *all mens Trials ſhould be by the eſtabliſhed Lawes, and not otherwiſe*: they are the very words of the Petition of Right.

1. Part. col. of Ordinances, fol. 728
2. Pars inſt. fol. 47, 48. 157. 143.
4. par inſtit. 23, 232. 238.
4. H. 7. 18.

An Ordinance of both Houſes is no Law of the Land, by their owne confeſſion; and by the Bookes of the Lord *Cook, publiſhed by their Order, as aforeſaid*, this Seſſion in ſix ſeverall places.

For *Sedition*, in my Bookes there is none, but ſuch as they have *authoriſed this Seſſion, to be publiſhed and printed* To publiſh the Law is no ſedition. Theſe poſitions followiug I doe ſet down for the Law of the Land in my Bookes,

Books, and they themselves have justified, and avowed them as aforesaid, we agree the Law to be, and to have been in all Times in all the particulars following, as here ensueth.

1. *To imprison the King is High Treason.* — 3 Parts instit page 12.

2. *To remove Councellors from the King by force is High Treason.* — M. Sollicitor pag. 12. 3. part instit. page 9.

3. *To alter the establisht Lawes in any part by force is High Treason:* — MPim. p. 28 3 part instit. 3. 10. 12, 16.

4. *To usurpe the Royall Power is High Treason.* — 3 part instit. p. 9.

5. *To alter the Religion establisht is High Treason.* — M. Sollicitor p. 3. 31. 36.

6. *To raise rumours and give out words to alienate the peoples affections from the King is High Treason.* — M. Sollicitor p. 9.

7. *To sesse Souldiers upon the people of the Kingdome, with-*

without their consent, is High Treason.

M. Solicitor pag. 9.

8. *The execution of paper orders by Souldiers in a military way, is High Treason.*

M. Solicitor pag. 24. 4. part inst. p. 125. Iustice Huttons argument, fol. 39, 40.

9. *To counterfeit the great Seale, is High Treason.*

10. *The Commission of Array, is in force, and none other.*

4 part. instit.

11. *None can make Iudges, Iustices, Sheriffes, &c. but the King: The King makes every Court.*

2. part instit. articul. super chartas. cap. 5.

12. *The great Seal belongs to the Kings custody, or to whom he shall appoint, and none other.*

1. part. Coll. of Ordin & Cook ut supro.

13. *Ordinances of one or both Houses are no lawes to binde the people.*

4. p. inst. 25.

14. *No Priviledg of Parliament, holds for Treason, Felony,*

lony, or breach of the Peace, not for twenty Parliament men, forty, nor three hundred.

15. *To subvert the fundamentall laws is hightreason.* M. Solicitor pag. 8. 70.

16. *To levey warre against the person of the King is high Treason.* M. Solicitor pag. 12. 27.

17. *To perswade Forreiners to levy war within this Kingdome, is High Treason.* M. Solicitor pag. 26.

18. *To impose unlawfull Taxes, to impose new Oaths, is High Treason.* M. Solicitor pag. 35.

19. *The King can do no wrong.* M. Pim. p. 8.

20. *It is a pernicious Doctrine to teach Subjects, they may be discharged from the oath of Allegiance.* Then what means the doctrine of both Houses of the Votes 11 of *Feb.* 1647. M. Pim. pag 17.

M. Pym, p. 24.

21. *A necessity of a mans own making, doth not excuse him.* The requiring and forcing of the Militia, brought the necessity of arming upon the Houses.

3. part. inst. pag. 9.

22. *None can levy war within this Realme without authority from the King, for to him only it belongeth to levy war, by the Common Law of the Land, to do otherwise is High Treason by the said Common Law.* The onely quarrell was and is the *Militia*: for the which so much blood hath been spent, and Treasure.

M. Solicitor 70. 71. 4. part. inst. pag. 1. 3. 4. 4 pars inst. 41. 356.

23. *No Parliament without the King, he is Principium, caput & finis.*

24. *Presentment or tryall by Jury, is the birth-right of the Subject.* There

There is no doubt but that many in both Houses are free from this *great sin*, and that most of the prevailing party, had at first no intentions to proceed so farre; but the madnesse of the People (who are very unstable, and so they will finde them) and the successe of their Armies (having this great rich City to supply them with al accommodations) have so elated them, that the evil is come to this height.

For my selfe, to put me to death in this cause is the greatest honour I can possibly receive in this World: *Dulce & decorum est mori pro patriâ.* And for a Lawyer and a Judge of the Law, to die *Dum sanctis patriæ legibus obsequitur*; for obedience to the Lawes; will be deemed by the good men of this Time, a sweet smelling sacrifice; and by this, and future Times, that I dyed full of yeares, and hand an honest and honourable end. And posterity will take knowledge of these Men, who put some to death for subverting of the Lawes, and others for supporting of them; *&c.*

Yet mercy is above all the Workes of God; *The King is Gods Vicar on earth.* In *Bracton*, who was a Judge in *Henry* 3. time, you shall finde the Kings Oath; *To shew mercy*, is part of it

Bracton. l. 3. c. 9. p. 107. 4. pats inst. 342, 343. Stanford 99.

You

You are all his children ; say, and do what you will, you are all his Subjects, and *He is your King* and Parent : *Pro magno peccato paupulum supplicij satis est patri* : and therefore let not the prevailing party be obdurate, out of a desparation of safety : That which is past is not revocable. Take to your thoughts your parents, your wives, your children, your friends, your fortunes, your couutrey ; wherin Forreigners write there is *Mira aeris suavitas & rerum omnium abundantia* : Invite them not hither the only way to be free of their company will be, *To restore his Majesty, and receive from Him an Act of Oblivion, a generall Pardon, Assurance for the Arreares of the Souldiery, and meet satisfaction to tender consciences.*

God preserve the King and the Lawes,

DAVID JENKINS,
Prisoner in New-gate.

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